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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

RICK LEE MACKLIN; SARAH MORSE,

Plaintiffs,

v.

INTUIT, INC.,

Defendant.

Case No. _____

UNLIMITED CIVIL CASE

**COMPLAINT FOR PUBLIC INJUNCTIVE
RELIEF FOR VIOLATION OF THE
CONSUMER LEGAL REMEDIES ACT;
FALSE ADVERTISING; AND UNFAIR,
UNLAWFUL, AND/OR DECEPTIVE
TRADE PRACTICES**

JURY TRIAL DEMANDED

INTRODUCTION

1. Plaintiffs, Rick Lee Macklin and Sarah Morse (“Plaintiffs”), by and through their attorneys, bring this action against Defendant Intuit, Inc. (“Defendant” or “Intuit”), for public injunctive relief to prevent future violations of California’s Consumer Legal Remedies Act (“CLRA”), California Civil Code §§ 1750 *et seq.*; False Advertising Law (“FAL”), Cal. Bus. & Prof. Code §§ 17200 *et seq.*; and Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17500 *et seq.* Plaintiffs allege the following upon information and belief, except for those allegations that specifically pertain to Plaintiffs, which are based on Plaintiffs’ personal knowledge.

2. Defendant markets and sells the TurboTax brand of tax preparation software and services to consumers and businesses.

3. In 2002, the Internal Revenue Service (“IRS”) launched a program pursuant to which the majority of taxpayers in the United States would be able, and would be encouraged, to e-file their federal tax returns for free. To accomplish this goal, the IRS partnered with private companies to handle the e-filing services and processes. Under the program, all taxpayers with adjusted gross income below the 70th percentile (currently, below \$66,000 per year) are eligible for free online filing.

4. Through its participation in the IRS “Free File” program, Defendant is required to make available free electronic tax filing services to certain eligible taxpayers and to refrain from marketing its commercial services in competition with the Free File program. While Defendant does purport to offer such a free service, which Defendant has called “TurboTax Freedom Edition” (also referred to herein as “Defendant’s Free File Service”), Defendant is affirmatively acting to hide that program from taxpayers and to divert taxpayers seeking free e-filing services into Defendant’s paid programs. These actions violate both California law and Defendant’s agreement with the IRS.

5. Defendant aggressively advertises and directs consumers to a product Defendant calls “TurboTax Free Edition,” or just “TurboTax Free,” which is not the same as Defendant’s

1 Free File Service and which is **not** free for most taxpayers. At the same time, Defendant
2 aggressively hides the existence of Defendant's real Free File Service, including intentionally
3 hiding it from search engines and depressing its search rankings. "TurboTax Free" is a lure
4 Defendant uses to ensnare unsuspecting taxpayers. Defendant's use of "TurboTax Free" to divert
5 taxpayers from the IRS Free File program and to prompt taxpayers to "upgrade" and pay for
6 Defendant's tax preparation services is essentially a bait-and-switch scheme ("Defendant's Bait-
7 and-Switch Program").

8 6. The majority of taxpayers are eligible to file their tax returns for free and should be
9 directed to one of the IRS Free File offers. By contrast, only a very small portion of taxpayers
10 satisfy the conditions for filing a free return within Defendant's Bait-and-Switch Program.
11 Nonetheless, Defendant heavily promotes its Bait-and-Switch Program, manipulates search
12 engine results to divert taxpayers seeking free services (such as Defendant's Free File Service)
13 into Defendant's Bait-and-Switch Program, and then prompts many taxpayers to pay Defendant
14 for services that those taxpayers do not need. Once Defendant lures taxpayers into Defendant's
15 Bait-and-Switch program, Defendant falsely and misleadingly tells them that they must pay to file
16 their tax returns, even though the taxpayers are actually eligible to file their returns for free
17 through Defendant's Free File Service or through another IRS Free File program available from
18 another provider. Defendant's deceptive conduct of creating the Bait-and-Switch program
19 misleads reasonable taxpayers to believe that they are ineligible for the IRS Free File program,
20 when in fact they are eligible.

21 7. In pursuing this scheme, Defendant disregards its agreement with the IRS, which
22 requires Defendant to direct taxpayers to other free e-filing services when they do not qualify for
23 Defendant's Free File Service, and which requires Defendant to refrain from marketing its paid
24 services in such direct competition with and to the disadvantage of the IRS Free File program.
25 Defendant's marketing campaign is not only deceptive but it unfairly violates the spirit of
26 Defendant's contract with the IRS, in which Defendant agreed to ensure that taxpayers, especially
27 lower income taxpayers, would have unfettered access to free e-filing services.
28

1 **PARTIES**

2 8. Plaintiff Rick Lee Macklin is, and at all times alleged in this Complaint was, an
3 individual and resident of Riverside, California.

4 9. Plaintiff Sarah Morse is, and at all times alleged in this Complaint was, an
5 individual and resident of Yuba City, California.

6 10. Defendant Intuit, Inc. is a company existing under the laws of the State of
7 Delaware, having its principal place of business at 2700 Coast Avenue, Mountain View,
8 California 94043.

9 **JURISDICTION AND VENUE**

10 11. Plaintiffs bring this action pursuant, *inter alia*, to the California Business and
11 Professions Code, section 17200, *et seq.* Plaintiffs and Defendant are “persons” within the
12 meaning of the California Business and Professions Code, section 17201.

13 12. The injuries, damages and/or harm upon which this action is based, occurred or
14 arose out of activities engaged in by Defendant within, affecting, and emanating from, the State
15 of California.

16 13. Defendant has engaged, and continues to engage, in substantial and continuous
17 business practices in the State of California, including in the City of Mountain View and County
18 of Santa Clara. Defendant has its headquarters in Mountain View, California, in the County of
19 Santa Clara.

20 14. Venue is further proper in this Court due to Defendant’s Terms of Service
21 applicable to Plaintiffs, which states in part: “California state law governs this Agreement without
22 regard to its conflicts of laws provisions. To resolve any legal dispute arising from this
23 Agreement, you and Intuit agree to the exclusive jurisdiction of state courts in Santa Clara
24 County, California U.S.A. or federal court for the Northern District of California.” Although the
25 Terms of Service also include an arbitration provision, this action is not subject to arbitration
26 because it seeks only injunctive and declaratory relief. The arbitration provision states as follows:

27 DISPUTES. ANY DISPUTE OR CLAIM RELATING IN ANY WAY TO THE
28 SERVICES OR THIS AGREEMENT WILL BE RESOLVED BY BINDING

1 ARBITRATION, RATHER THAN IN COURT, except that you may assert claims in
2 small claims court if your claims qualify. The Federal Arbitration Act governs the
3 interpretation and enforcement of this provision; the arbitrator shall apply California law
4 to all other matters. **Notwithstanding anything to the contrary, any party to the**
5 **arbitration may at any time seek injunctions or other forms of equitable relief from**
6 **any court of competent jurisdiction.** WE EACH AGREE THAT ANY AND ALL
7 DISPUTES MUST BE BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITY
8 AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS
9 OR REPRESENTATIVE PROCEEDING. BY ENTERING INTO THIS AGREEMENT
10 AND AGREEING TO ARBITRATION, YOU AGREE THAT YOU AND INTUIT ARE
11 EACH WAIVING THE RIGHT TO FILE A LAWSUIT AND THE RIGHT TO A TRIAL
12 BY JURY. IN ADDITION, YOU AGREE TO WAIVE THE RIGHT TO PARTICIPATE
13 IN A CLASS ACTION OR LITIGATE ON A CLASS-WIDE BASIS. YOU AGREE
14 THAT YOU HAVE EXPRESSLY AND KNOWINGLY WAIVED THESE RIGHTS.

15 15. In accordance with California Civil Code Section 1780(d), Plaintiffs file herewith
16 a declaration, attached as Exhibit 1, establishing that they are filing this lawsuit in the county
17 which Defendant holds itself out as having its principal place of business.

18 16. Plaintiffs accordingly allege that jurisdiction and venue are proper in this Court.

19 **SUBSTANTIVE ALLEGATIONS**

20 **A. Defendant's TurboTax Service**

21 17. Defendant is a multinational, publically-traded company, which develops, markets,
22 and sells a number of financial software products, including its flagship line of products,
23 TurboTax, an electronic tax preparation and filing software. According to a January 30, 2019
24 article posted on The Wall Street Journal website, last year TurboTax products were used to
25 prepare 35 million tax returns. Additionally, Intuit reported in its Annual 10-K Report filed with
26 the SEC for the fiscal year ending July 31, 2018, that its consumer segment, which includes
27 TurboTax, reported \$1.6 billion in operating income.

28 18. Electronic tax preparation and filing software consists of two basic components: a
user interface that prompts users to provide relevant information and an underlying tax engine
which processes the information. The interface is similar to that with a live tax preparer. Through
a series of questions, taxpayers provide information to the software, which is then processed by
the tax engine for calculation. The tax engine is a software program based upon federal and state
tax codes and regulations.

1 19. Defendant offers both a desktop version of the software and an online version.
2 Taxpayers using the online version of TurboTax create an account and fill out their tax
3 information through a web-based program at Defendant's website. Nearly all of Defendant's
4 electronic tax preparation and filing software, such as TurboTax Home & Business, TurboTax
5 Deluxe, and TurboTax state editions, is sold to consumers and businesses for a fee. Among those
6 sold to the public for profit by Defendant is the deceptively named TurboTax Free, which is only
7 free in limited instances. (Defendant's for-profit tax preparation offerings are collectively referred
8 to herein as "Paid TurboTax Programs".)

9 **B. IRS Free File Program**

10 20. Congress passed the Restructuring and Reform Act of 1998, which set goals to
11 have at least 80 percent of all federal tax returns filed electronically by 2007. To meet this 80
12 percent benchmark, the IRS developed a "Free File" program in 2001-2002, whereby, in theory,
13 the majority of taxpayers would be entitled to e-file their federal tax returns for free.

14 21. Rather than develop its own software to allow for the filing of tax returns
15 electronically, the IRS decided to partner with established private software companies to provide
16 free tax preparation and filings services. In 2002, Free File Alliance, LLC was formed, consisting
17 of companies engaged in the electronic tax preparation and filing industry ("Members"),
18 including the major electronic tax preparation companies such as Defendant. In 2010, those
19 Members formed Free File, Inc. to take the place of Free File Alliance, LLC, but the Members
20 and Free File, Inc. still sometimes use the name "Free File Alliance" to refer to themselves. (Free
21 File, Inc. and its predecessor Free File Alliance, LLC are collectively referred to herein as "FFI.")

22 22. On October 30, 2002, FFI and the IRS entered into a 3-year agreement that set
23 forth parameters for the IRS Free File program, pursuant to which FFI would offer free online tax
24 preparation and filing services to the majority of taxpayers. In exchange for providing this
25 service, the IRS agreed not to independently develop and maintain its own tax return e-filing
26 system.

1 23. In particular, the Free File program is intended to serve all taxpayers with an
2 adjusted gross income (“AGI”) equal to or less than that of 70 percent of all taxpayers for the
3 prior year (“Eligible Taxpayers”). For the 2018 tax year, taxpayers with an AGI of \$66,000 or
4 less would qualify for the Free File program. To further encourage e-filing, the IRS provides
5 substantial incentives to taxpayers who file their returns electronically, including quicker
6 processing and more rapid tax refunds, and threatens those who do not with a greater likelihood
7 of an audit.

8 24. FFI and IRS have subsequently renewed their original agreement and entered into
9 supplemental Memorandum of Understanding agreements to the original agreement. The current
10 operating agreement between FFI and the IRS is the Eighth Memorandum of Understanding on
11 Service Standards and Disputes Between the Internal Revenue Service and Free File,
12 Incorporated (“Eighth MOU”, attached hereto as Exhibit 2), which became effective on October
13 31, 2018 and has a termination date of October 31, 2021.

14 **C. The Eighth MOU Requires FFI Members to Provide Filers With Easy,**
15 **Streamlined Access to Free Tax Filing Services**

16 25. Under the terms of the Eighth MOU, FFI Members are to assist the IRS in
17 increasing electronic filing of tax returns, and in particular, provide those services “to
18 economically disadvantaged and underserved populations at no cost to either the individual user
19 or to the public treasury.” Ex. 2, Art. 2. In participating in the program, the FFI Members
20 explicitly agree “to serve the greater good” and acknowledge that the program “is focused on
21 covering the taxpayers least able to afford e-filing their returns on their own.” *Id.* FFI Members
22 also agree to “[m]ake tax return preparation and filing easier and reduce the burden on individual
23 taxpayers, particularly the economically disadvantaged and underserved populations,” *Id.*, § 2.1;
24 and “provid[e] taxpayers the option to file their tax return online without charge.” *Id.*, § 2.4.

25 26. Pursuant to the Eighth MOU, FFI as a whole is required to make free e-filing
26 services available to all Eligible Taxpayers. Each Member of FFI is only responsible, however, to
27 serve between 10% and 50% of Eligible Taxpayers. Accordingly, the Members of FFI have
28

1 agreed among themselves that each Member will serve only a portion of Eligible Taxpayers,
2 based on various criteria, so that all Eligible Taxpayers have access to at least one platform on
3 which they can e-file their return. In other words, Members agree that some Members will serve
4 only qualified taxpayers who make over a certain amount or require the use of certain additional
5 schedules, whereas others will serve only those with lower AGIs or do not need those schedules.
6 Defendant has agreed with FFI Members to offer free e-filing services to taxpayers (a) with AGI
7 of \$34,000 or less, (b) who are eligible for the Earned Income Credit, or (c) who are active
8 military members with AGI of \$66,000 or less. Other Members serve non-military taxpayers with
9 up to \$66,000 of AGI, with different exclusions. The various factors that a consumer must
10 consider to determine which Member's offer he or she qualifies for is complex. The current list of
11 available offers under the IRS Free File program is available at <https://apps.irs.gov/app/freeFile>
12 (last accessed Apr. 30, 2019).

13 27. To ensure that Eligible Taxpayers are able to e-file for free, FFI and the IRS have
14 agreed that each Member must set up their e-filing system in such a way so as to ensure taxpayers
15 who do not qualify for that particular Member's free e-filing service can easily locate a free e-
16 filing service for which they do qualify. Ex. 2, §§ 4.19.2(iii), 4.32.2. Specifically, in the event that
17 a taxpayer is ineligible for Defendant's Free File offer, Defendant is required to direct the
18 taxpayer "back to the IRS Free File Landing Page as the first and most prominent alternative
19 action so that [the taxpayer] may immediately consider other Free File offers available from the
20 Free File Program." Ex. 2, §§ 4.19.2(iii).

21 28. FFI and the IRS agreed that the IRS Free File program should not be used by FFI
22 Members to sell their commercial products and services. Members are not permitted to include "a
23 'value-added' button (i.e., an icon, link, or any functionality that provides a taxpayer with access
24 to a Member's commercial products or services) on the Member's Free File Landing Page." Ex.
25 2, § 4.32.6. More generally, "[n]o marketing, soliciting, sales or selling activity, or electronic
26 links to such activity are permitted in the Free File Program," with two limited exceptions. The
27 first exception is the sale of a federal return **after** the taxpayer is notified that he or she is
28

ineligible for the Member's Free File offer, has been directed back to the IRS Free File Landing Page to consider other Free File offers, and has nonetheless chosen "to complete and file his or her return using the Member's commercial offer." Ex. 2, § 4.32.5. The second exception is for "disclosures or sales (as applicable) related to free or paid state tax preparation offers as specifically provided for in this MOU." *Id.*

29. Once a taxpayer has filed a return using a Member's Free File service, the Member is required to send at least one email to the taxpayer prior to the next year's tax season reminding the taxpayer of that Member's Free File offer and inviting the taxpayer to return to that Member's Free File Landing Page. Ex. 2, § 4.32.4. Free File Members may not use that communication to market non-Free File products or services.

D. Defendant's Bait-and-Switch Program Is Designed to Trick Taxpayers Into Paying to E-File and Violates the Spirit of the Eighth MOU.

30. Defendant purports to offer two separate "free" services: Defendant's Free File Service and Defendant's Bait-and-Switch Program. However, the Bait-and-Switch Program is designed to supplant Defendant's Free File Service and then to railroad Eligible Taxpayers into purchasing Paid TurboTax Programs.

31. Defendant's Free File Service is offered pursuant to its participation in the FFI and the Eighth MOU. To qualify for Defendant's Free File Service, which provides free e-filing for both federal and state tax returns, the taxpayer must: (i) have \$34,000 or less in AGI or, if the taxpayer is in the military, \$66,000 or less in AGI; or (ii) qualify for the Earned Income Credit. The website for Defendant's Free File Service is: <https://turbotax.intuit.com/taxfreedom>.

32. Defendant's Bait-and-Switch Program, while using the word "free" extensively, is actually free for few taxpayers and is designed to extract money from vulnerable taxpayers, thereby undermining the usage, effectiveness, and goals of Defendant's Free File Service and of the IRS Free File program generally. Among other things: (a) Defendant pays to broadly advertise its Bait-and-Switch Program on multiple platforms, in ways designed to deceive, mislead, and confuse consumers about the nature and cost of Defendant's tax services and to effectively

1 supplant Defendant's Free File Service; (b) Defendant manipulates search engine results to ensure
2 that the vast majority of internet users searching for Defendant's Free File Service are funneled
3 instead into Defendant's Bait-and-Switch Program; and (c) Defendant designs its websites to
4 convince taxpayers that they are in the process of filing a free return when, in fact, they are in
5 Defendant's Bait-and-Switch Program. In its advertising, internet search manipulations, and
6 website designs, Defendant repeatedly and heavily emphasizes the word "free," to mislead
7 taxpayers as to the nature of the Bait-and-Switch Program.

8 **1. Defendant Went to Great Lengths to Steer Taxpayers Into the Bait-and-**
9 **Switch Program Instead of the Free File Service.**

10 33. Defendant has used a variety of tactics to conceal its Free File Service and cover
11 any traces of that Free File Service by aggressively promoting its Bait-and-Switch Program.

12 34. First, Defendant has paid for extensive ad campaigns on television and social
13 media platforms for Defendant's Bait-and-Switch Program. Defendant's television
14 advertisements generally include repetition of the word "free" many times and conclude with the
15 statements "TurboTax Free is free. Free, free free free." Several of these television commercials
16 are available at [https://www.adweek.com/agencyspy/wieden-kennedy-keeps-the-free-going-with-](https://www.adweek.com/agencyspy/wieden-kennedy-keeps-the-free-going-with-new-one-word-turbotax-ads/152797/)
17 [new-one-word-turbotax-ads/152797/](https://www.adweek.com/agencyspy/wieden-kennedy-keeps-the-free-going-with-new-one-word-turbotax-ads/152797/) (last accessed Apr. 30, 2019).

18 35. Second, Defendant purposely made it difficult to find Defendant's Free File
19 Service by placing a "noindex" tag on the webpage for that Free File Service, which essentially
20 tells search engines **not** to crawl that page. In particular, the source code for
21 <https://turbotax.intuit.com/taxfreedom> included the following line of code:

22 `<meta name="robots" content="noindex,nofollow,noodp" />`

23 36. As a result, the website for Defendant's Free File Service typically would not
24 appear in search results, while Defendant's TurboTax homepage (<https://turbotax.intuit.com/>) and
25 a webpage for Defendant's Bait-and-Switch Program ([https://turbotax.intuit.com/personal-](https://turbotax.intuit.com/personal-taxes/online/free-edition.jsp)
26 [taxes/online/free-edition.jsp](https://turbotax.intuit.com/personal-taxes/online/free-edition.jsp)) would appear at the top of the list of results for searches for the
27 terms "turbotax" and "turbotax free."
28

1 37. ProPublica, a nonprofit news organization, recently published a series of articles
2 exposing Defendant's unfair and deceptive practices with respect to the IRS Free File program
3 and Defendant's Bait-and-Switch Program. One of those articles explained how Defendant used
4 its source code to hide the webpage for Defendant's Free File Service, using the code referenced
5 in the above paragraph. *See* [https://www.propublica.org/article/turbotax-deliberately-hides-its-](https://www.propublica.org/article/turbotax-deliberately-hides-its-free-file-page-from-search-engines)
6 [free-file-page-from-search-engines](https://www.propublica.org/article/turbotax-deliberately-hides-its-free-file-page-from-search-engines) (last accessed Apr. 30, 2019).

7 38. In response to that negative press about Defendant's deceptive and unfair
8 practices, and recognizing that its practices were, in fact, unfair and deceptive, Defendant
9 changed the above-referenced line of source code on or about April 28, 2019, to the following:

10 <meta name="robots" content="index,follow,noodp" />

11 39. Accordingly, it appears that Defendant is now allowing search engine robots to
12 index the homepage for Defendant's Free File Service. However, Defendant continues to engage
13 in a number of additional unfair and deceptive practices.

14 40. For example, Defendant prevents search engine robots from crawling most of the
15 other webpages for Defendant's Free File Service by including the following instructions in the
16 robots.txt file for Defendant's website (see <https://turbotax.intuit.com/robots.txt>):

17 Disallow: /taxfreedom/about_us/

18 Disallow: /taxfreedom/ca/

19 Disallow: /taxfreedom/css/

20 Disallow: /taxfreedom/fragments/

21 Disallow: /taxfreedom/images/

22 Disallow: /taxfreedom/js/

23 Disallow: /taxfreedom/lp/

24 Disallow: /taxfreedom/qualify/

25 Disallow: /taxfreedom/support/

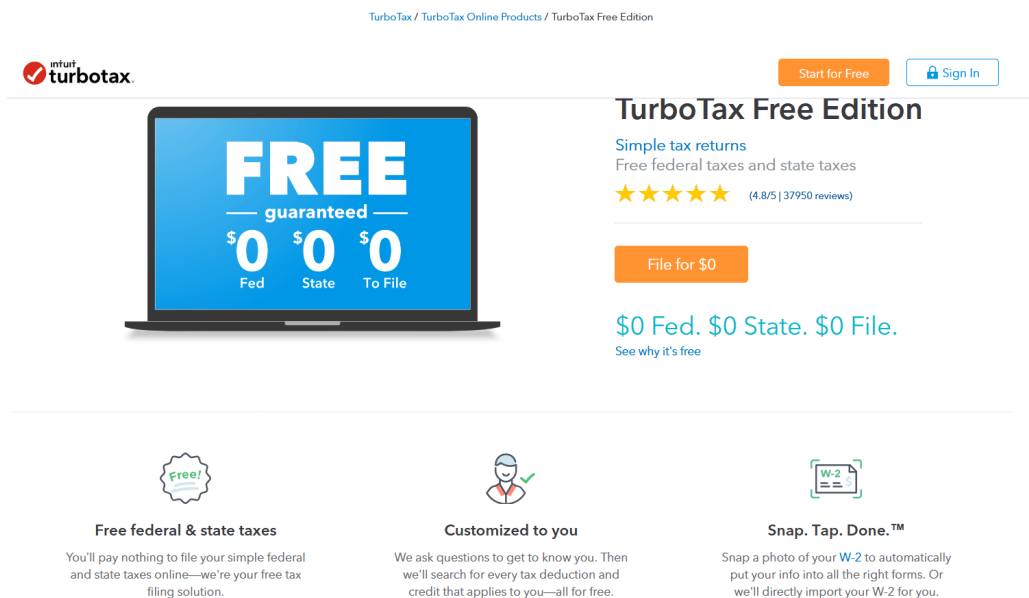
26 Disallow: /taxfreedom-value-added-offers

41. As indicated above, Defendant continues to bar indexing of images on the pages of Defendant's Free File Service, which further limits the ways in which search engines point to it and taxpayers might find it.

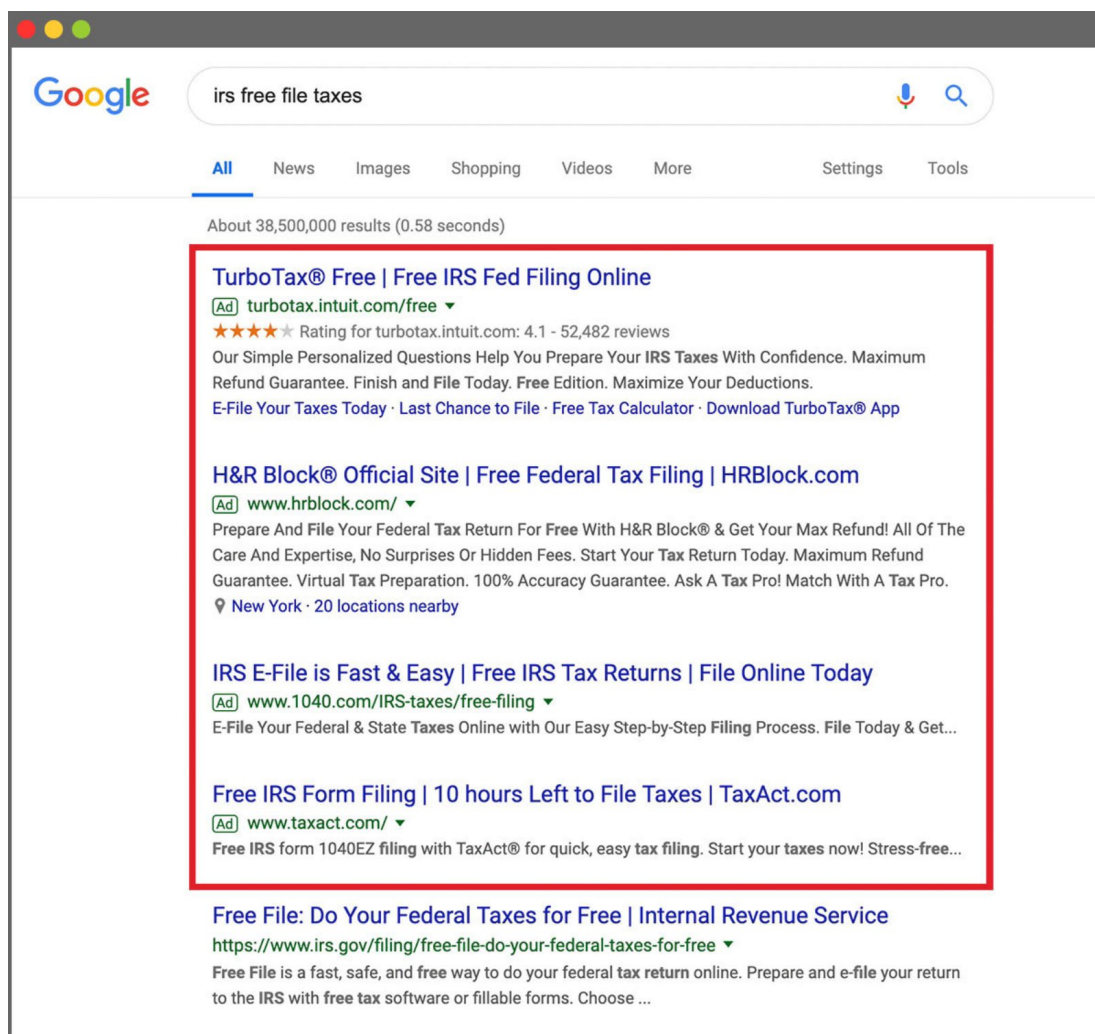
42. More noticeably, Defendant hijacks demand for its Free File Service and redirects taxpayers into Defendant's Bait-and-Switch Program.

43. With respect to internet searches, Defendant's TurboTax homepage (<https://turbotax.intuit.com/>) and a webpage for Defendant's Bait-and-Switch Program (<https://turbotax.intuit.com/personal-taxes/online/free-edition.jsp>) continue to appear at the top of the list of results for searches for the terms "turbotax" and "turbotax free."

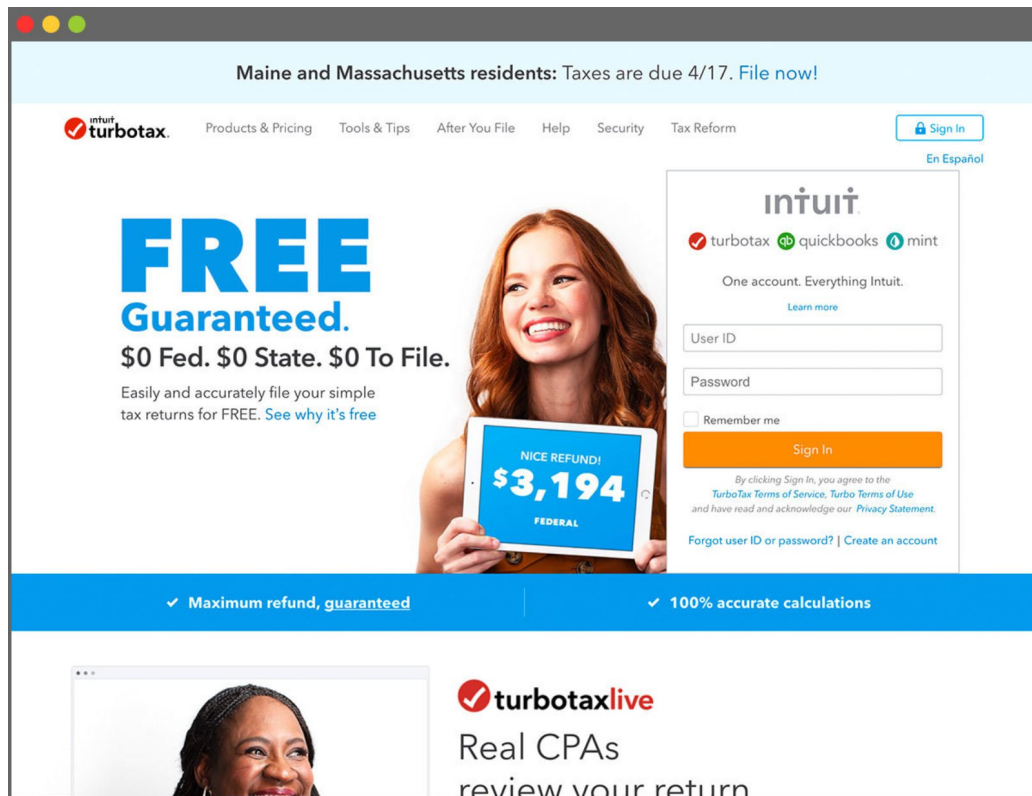
44. One of the landing pages for Defendant's Bait-and-Switch Program (<https://turbotax.intuit.com/personal-taxes/online/free-edition.jsp>) repeatedly represents that Defendant's tax preparation services are "free" as the screenshot below shows:



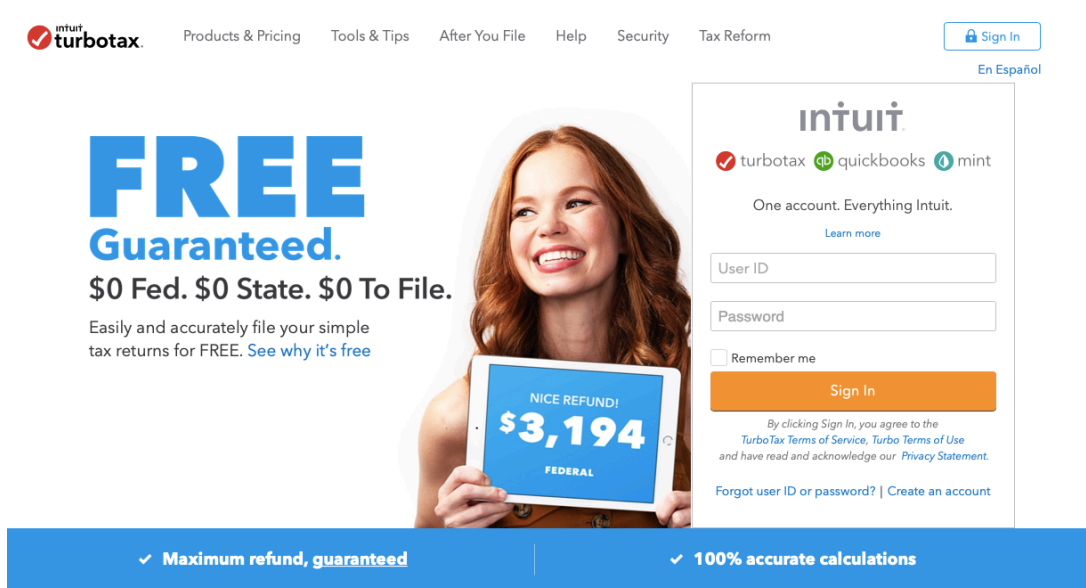
45. During peak filing season, Defendant purchases advertising so that when taxpayers search for "irs free file taxes" in Google, the first search result was a paid advertisement from Defendant directing taxpayers to "Turbo-Tax Free | Free IRS Fed Filing Online" as set forth in the screenshot below:



46. During the periods when Defendant runs such an ad, taxpayers who click the first link are taken to the “TurboTax Free Edition” webpage (Defendant’s Bait-and-Switch Program). This webpage represents that the taxpayer can file a tax return for free through this entry point. As depicted below, the website states: “FREE Guaranteed. \$0 Fed. \$0 State. \$0 to File. Easily and accurately file your simple tax returns for FREE.”



47. Even if a taxpayer were to begin the process of looking for a tax preparation service by visiting the TurboTax homepage (<https://turbotax.intuit.com/>), rather than using a Google search, that taxpayer would still not be able to access Defendant's Free File Service or the IRS Free File program landing page from that website. Instead, the taxpayer is presented with a similar starting screen which promises that that TurboTax is "FREE Guaranteed. \$0 Fed. \$0 State. \$0 to File. Easily and accurately file your simple tax returns for FREE," as reflected in the following screenshot:



48. Taxpayers who click on the Products & Pricing webpage were again reassured by Defendant that the tax preparation service would be free:

File for \$0

You'll pay nothing to file your federal and state taxes if you have a [simple tax return](#). Start by easily importing your W-2, answer simple non-tax questions about your life, and we'll get you your maximum refund, [guaranteed](#).

[See why it's free](#)

FREE

— **guaranteed** —

\$0 \$0 \$0

Fed State To File

- ✓ Free filing of your simple federal and state tax returns, [guaranteed](#)
- ✓ Covers W-2 income, Earned Income Tax Credit (EIC) and child tax credits
- ✓ Jumpstart your return with last year's TurboTax info or import a PDF of your return from another tax software
- ✓ Guidance in case of an audit, backed by our [Audit Support Guarantee](#)
- ✓ Get answers 24/7 from our online community of TurboTax specialists and customers

49. Defendant takes other affirmative acts to channel taxpayers into its Bait-and-Switch Program, to heighten the visibility of its Bait-and-Switch Program, and to suppress the IRS Free File program.

50. For example, Defendant runs an affiliate marketing program for third-party publishers of blogs and other websites. This affiliate marketing program encourages such publishers to promote Defendant's TurboTax services on their websites and to provide links to

1 TurboTax webpages where consumers can sign up for TurboTax services. In exchange, the
2 publishers earn a commission when a consumer uses a TurboTax service. For example, in one
3 campaign, a third-party publisher would earn \$1.00 if a consumer filed with the “Free Edition”
4 portion of Defendant’s Bait-and-Switch Program and would earn a percentage commission for
5 certain Paid TurboTax Programs.

6 51. Defendant designed its affiliate marketing program for TurboTax to target
7 consumers who want to file their taxes for free, including consumers who qualify for the IRS Free
8 File program. To guide publishers on how to target to consumers, Defendant instructed them that
9 the following terms are “Recommended SEM Bidding Keywords:” “free income tax, free income
10 tax filing, free online tax filing, free tax file, free tax filing, free tax prep, free tax preparation,
11 free tax return, free tax returns, free tax software, free taxes” In other words, Defendant
12 wants individuals searching for those terms to land, in the end, on Defendant’s website and, in
13 particular, in its Bait-and-Switch Program.

14 52. In the affiliate marketing program, the taxpayer typically takes a slight detour by
15 clicking on an article or webpage published by the affiliate publisher. That article or webpage
16 (perhaps in the guise of providing a review, a recommendation, or some other information) refers
17 to TurboTax, may actively promote TurboTax services, and provides a link to Defendant’s
18 website. The affiliate then collects a commission for transactions in which that consumer engages
19 while on Defendant’s website.

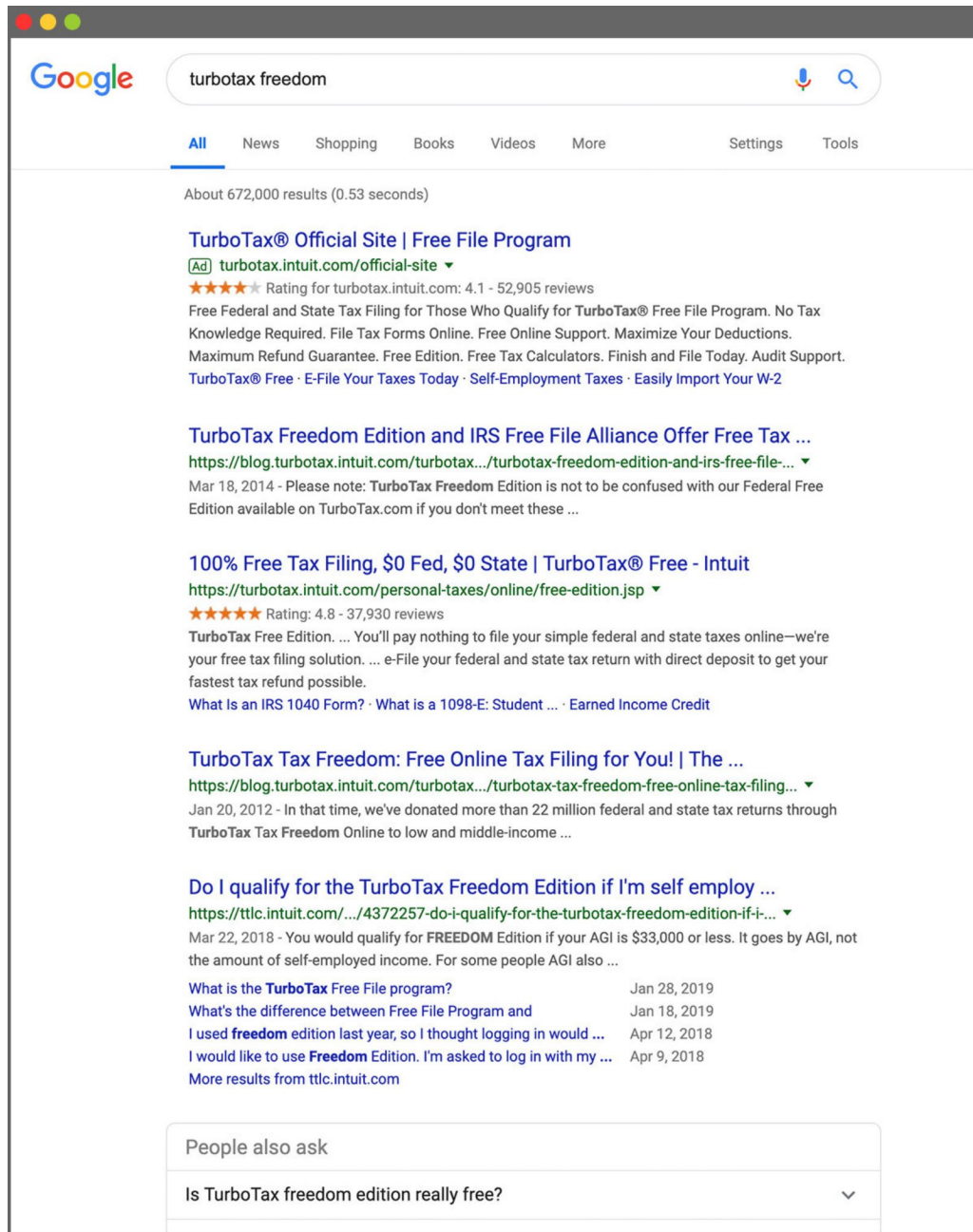
20 53. Like its other marketing efforts, Defendant designed its affiliate program to drive
21 consumers to Defendant’s Bait-and-Switch Program instead of Defendant’s Free File Service.
22 Defendant’s Free File Service is entirely excluded from the affiliate program. Defendant does not
23 provide third-party publishers with any link to Defendant’s Free File Service, nor does Defendant
24 provide them with any incentive to mention it on their websites. To the contrary, Defendant
25 prohibits affiliate publishers from using “ads with IRS or official government wording,” so that
26 taxpayers are directed only to Defendant’s Bait-and-Switch Program and are not led to a truly free
27 service.
28

1 54. Links from third-party websites to Defendant's Bait-and-Switch webpages are a
2 key reason why Defendant's Bait-and-Switch webpages rank so highly in the list of results for
3 search engine queries. Accordingly, Defendant's affiliate program not only pays other parties to
4 refer customers to Defendant's Bait-and-Switch Program but it also bolsters the ranking of
5 Defendant's Bait-and-Switch Program in search results generally. Defendant more broadly seeds
6 the internet and provides incentives for other websites to link to Defendant's Bait-and-Switch
7 program and to Defendant's webpages to ensure that those webpages are ranked at the top of
8 search results.

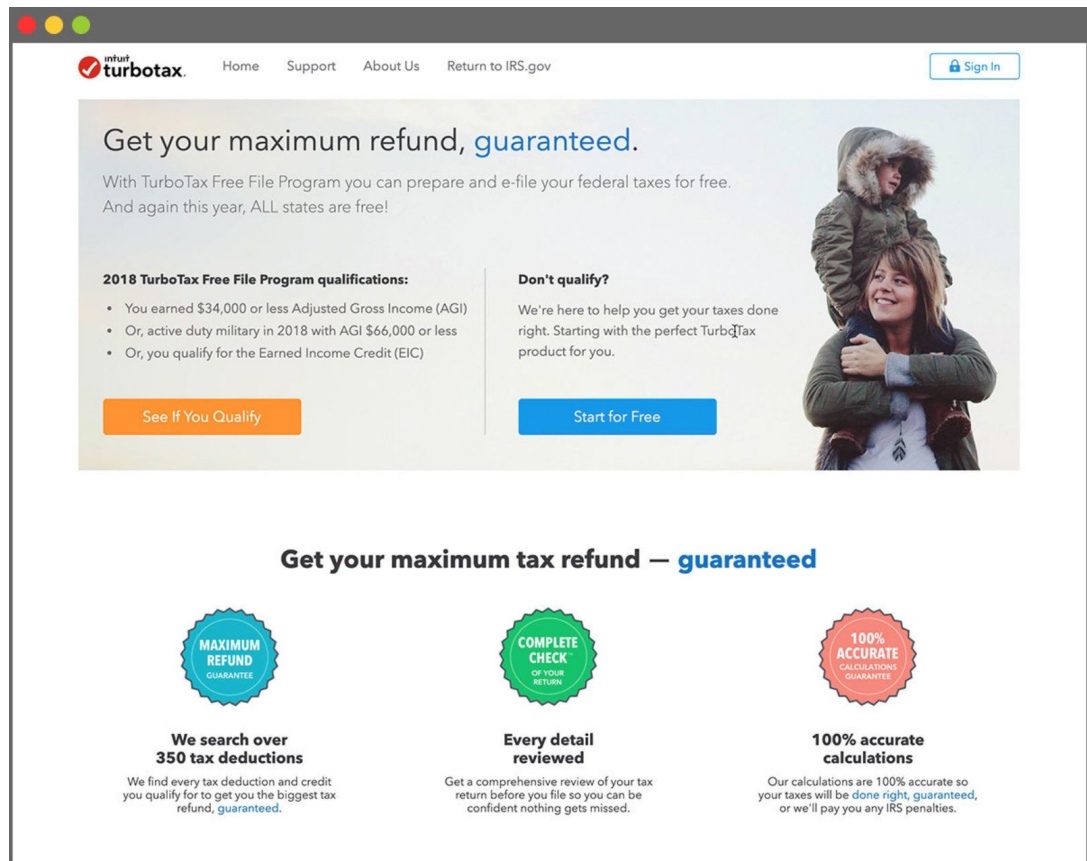
9 55. By contrast, Defendant makes no such efforts to encourage links to Defendant's
10 Free File Service. Defendant does not even promote or link to its Free File Service from other
11 webpages within Defendant's online domain. If anything, Defendant takes steps to ensure that its
12 genuine Free File Service is difficult to find (e.g., by prohibiting crawling or indexing), thereby
13 minimizing the number of third-party links to that service, lowering its ranking and public
14 awareness of that genuinely free service, and minimizing the number of taxpayers who find and
15 use Defendant's Free File Service.

16 56. Defendant's deceptive and unfair search engine manipulations together with its
17 deceptive, unfair, and confusing use of "free" also ensure that consumers will be directed to
18 Defendant's Bait-and-Switch Program even when Defendant has not purchased certain search
19 engine advertising. For example, on April 25, 2019, no paid ad result for Defendant's website
20 appeared in connection with a Google search for "free tax filing," but the fourth non-paid search
21 result was a link to Defendant's Bait-and-Switch Program, while no link to Defendant's Free File
22 Service appeared anywhere in the first several pages of Google search results.

23 57. If a taxpayer knew that Defendant's Free File Service was called the "Freedom
24 Edition," he or she might search Google for "turbotax freedom." The following results recently
25 appeared for that search:
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58. Here, the third (non-paid) search result was a link to Defendant's Bait-and-Switch Program while the first search result is a paid advertisement from Defendant stating "Turbo Tax Official Site | Free to File Program." If a taxpayer clicked on this link, she or he would be taken to Defendant's website as follows:



59. If a taxpayer clicks on the blue "Start for Free" link, the taxpayer is directed back to Defendant's Bait-and-Switch Program.

60. In sum, Defendant simultaneously makes it easy and likely for a taxpayer to end up on a webpage for Defendant's Bait-and-Switch Program, makes it very unlikely that a taxpayer would find Defendant's Free File Service, and makes it very unlikely that a taxpayer would see or understand the difference between the Bait-and-Switch Program and the Free File Service.

1 **2. Defendant Extracts Extensive Information from Taxpayers Under False**
2 **Pretenses and then Tricks Vulnerable Tax Payers Into Purchasing Paid**
3 **TurboTax Programs**

4 61. After arriving at Defendant's TurboTax homepage (<https://turbotax.intuit.com/>) or
5 at the webpage for Defendant's Bait-and-Switch Program ([https://turbotax.intuit.com/personal-](https://turbotax.intuit.com/personal-taxes/online/free-edition.jsp)
6 [taxes/online/free-edition.jsp](https://turbotax.intuit.com/personal-taxes/online/free-edition.jsp)), taxpayers are prompted to create a profile (or sign in if they already
7 have an account) and are then prompted to provide their sensitive personal and financial
8 information. At the beginning of the process, taxpayers are reassured that the filing will be free,
9 as indicated by the screenshots in the section above.

10 62. After the taxpayer creates a profile or logs in, Defendant then presents the taxpayer
11 with more than a dozen questions about their finances and personal data.

12 63. In reality, the "Free Edition" portion of Defendant's Bait-and-Switch Program is
13 free for only a limited number of taxpayers who have **only** W-2 income, who have not worked as
14 independent contractors, or received any other forms of income, and who are not required to file
15 other forms.

16 64. The overwhelming majority of the individuals who begin with the "Free Edition"
17 in Defendant's Bait-and-Switch Program are informed **at the end of the process** that they will, in
18 fact, be charged for Defendant's services. For many taxpayers—including those who want to take
19 itemized deductions (Schedule A), received business or 1099-MISC income (Schedule C), sold
20 stock (Schedule D), received rental property income (Schedule E), or want to claim credits,
21 deductions and/or income reported on schedules 1-6 (such as the student loan interest
22 deduction)—Defendant requires them to "upgrade" to accurately prepare their taxes. Some
23 examples of the "upgrade" screen are shown below:

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Wages & Income Deductions & Credits Health Insurance Other Tax Situations Federal Review

To accurately report this income, you'll need to upgrade

BENEFITS	Free Edition	Deluxe	Self-Employed
Report W-2 income	●	●	●
Report multiple sources of income—includes 1099-MISC, 1099-K, and more.		●	●
One-on-one help—get customized answers to your product and support questions from a TurboTax specialist.		●	●
Maximize deductions—claim self-employed expenses such as vehicle, phone, supplies, and more (Schedule C).			●

Keep Free \$0 Upgrade \$59.99 State additional Upgrade \$119.99 State additional Pays for Itself

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To accurately complete your taxes, you need to upgrade to **TurboTax Deluxe**

Why do I need to upgrade?

You have **Schedule 4, Other Taxes**, and that's just one of the reasons the IRS requires you to file Form 1040.

TurboTax Free Edition does not cover this situation

25 65. Defendant knows that many taxpayers who have spent the time required to enter
26 all their information in the Bait-and-Switch Program are unlikely to start over somewhere else,
27 particularly as Defendant hides the fact that another service would be truly free. Defendant also
28

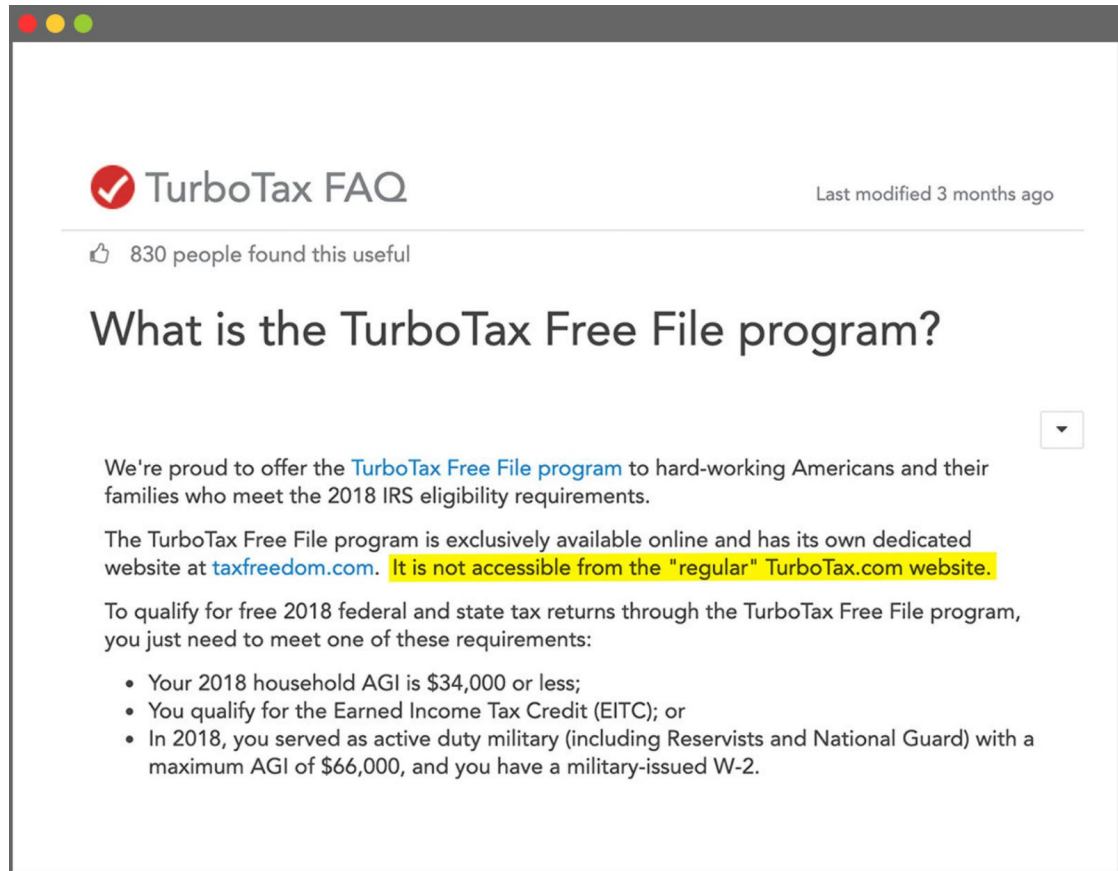
1 intends for reasonable taxpayers to conclude (and reasonably taxpayers do conclude) that they are
2 simply ineligible for free filing under the IRS Free File program, because Defendant does not
3 conspicuously inform them that (1) its Bait-and-Switch Program is not part of the IRS Free File
4 program, or (2) the taxpayers would be eligible for free filing through the IRS Free File
5 Program—either TurboTax Freedom or another Free File service available from another provider.
6 As intended by Defendant, many taxpayers ultimately pay the charge that Defendant tells them is
7 required at the end of the Bait-and-Switch Program.

8 66. To investigate Defendant’s practices, ProPublica completed the extensive
9 information fields in Defendant’s Bait-and-Switch Program using two different profiles (“a
10 TaskRabbit house cleaner who took in \$29,000” and “a Walgreens cashier without health
11 insurance”). In both cases, Defendant’s Bait-and-Switch Program informed ProPublica **only at**
12 **the end of the process** that the taxpayer would have to pay for Defendant’s service. Even though
13 both of those taxpayer profiles were eligible to file for free through Defendant’s own version of
14 the IRS Free File program (TurboTax Freedom), Defendant did **not** inform them about that free
15 filing option and instead demanded payment. *See* [https://www.propublica.org/article/turbotax-](https://www.propublica.org/article/turbotax-just-tricked-you-into-paying-to-file-your-taxes)
16 [just-tricked-you-into-paying-to-file-your-taxes](https://www.propublica.org/article/turbotax-just-tricked-you-into-paying-to-file-your-taxes) (last accessed Apr. 30, 2019).

17 67. ProPublica has since learned that many taxpayers in precarious financial situations
18 were tricked into paying fees to Defendant when they should have been directed to free filing
19 options. For example, a couple with serious health issues and with two disabled sons, who earned
20 \$32,877, and who have difficulty affording rent were charged almost \$200 by Defendant. And a
21 freelancer making only \$15 an hour was charged \$154 for Defendant’s TurboTax service. These
22 are just a few of the many stories highlighting the victims of Defendant’s practices, who need that
23 money for critical expenses. *See* [https://www.propublica.org/article/here-are-your-stories-of-](https://www.propublica.org/article/here-are-your-stories-of-being-tricked-into-paying-by-turbotax-you-often-need-the-money)
24 [being-tricked-into-paying-by-turbotax-you-often-need-the-money](https://www.propublica.org/article/here-are-your-stories-of-being-tricked-into-paying-by-turbotax-you-often-need-the-money) (last accessed Apr. 30, 2019).

25 68. Defendant does not inform taxpayers caught in Defendant’s Bait-and-Switch
26 Program that they can file tax returns for free if they qualify for Defendant’s Free File Service, or
27 whether the taxpayers do in fact qualify for Defendant’s Free File Service. For taxpayers using
28

1 Defendant's Bait-and-Switch Program but who qualify for Defendant's Free File Service,
2 Defendant does not offer to transfer the taxpayers' information to Defendant's Free File Service
3 to complete their return for free. In fact, Defendant admits that Defendant's Free File Service is
4 not accessible from the main TurboTax website:



69. Defendant also does not inform taxpayers caught in Defendant's Bait-and-Switch Program that they are eligible to file tax returns for free under the IRS Free File program, which requires only that the taxpayer's AGI not exceed \$66,000. There are no limitations on the federal program based on these forms (such as self-employment income, schedule 1-6 deductions, etc.).

70. In sum, Defendant's Bait-and-Switch Program violates, and is designed to circumvent, several of the provisions and protections of the Eighth MOU. In derogation of Section 4.19.2, Defendant's Bait-and-Switch Program does not "unequivocally inform taxpayers who are ineligible for the free offer at the earliest feasible point," that they are ineligible for the free e-filing service and direct them back to the IRS Free File Landing Page. To the contrary,

1 Defendant's Bait-and-Switch Program requires taxpayers to answer numerous questions and
2 provide a lot of personal and financial information before telling them whether they "need to
3 upgrade" (i.e., pay for the service). At no point does Defendant's Bait-and-Switch Program direct
4 taxpayers back to the IRS Free File Landing Page or inform them that they do or may qualify for
5 a Free File offer. Instead, Defendant uses Defendant's Bait-and-Switch Program to direct
6 taxpayers to Defendant's paid commercial services and products, which violates and/or unfairly
7 circumvents Sections 4.32.5 and 4.32.6 of the Eighth MOU.

8 71. Defendant knows that if it informed taxpayers who do not qualify for free filing in
9 Defendant's Bait-and-Switch Program about Defendant's Free File Service and about the IRS
10 Free File program, and transferred the financial information they had already entered into
11 Defendant's Free File Service and/or directed them to the IRS Free File landing page, those
12 taxpayers likely would not purchase any of Defendant's commercial offerings. Thus, Defendant
13 has devised a complicated scheme to evade the spirit of the MOU to increase its profits.

14 72. Defendant's efforts to steer taxpayers away from the Free File program to which
15 they are entitled have worked. During the 2017 tax season, only *three percent* of eligible
16 taxpayers (i.e., 2,231,261 taxpayers) filed using free returns through the FFI. *See* Internal
17 Revenue Service Advisory Council November 2018 PUBLIC REPORT p. 5316.

18 **E. Plaintiff Macklin's Experiences**

19 73. Plaintiff Macklin's AGI for 2018 was less than \$66,000, so he was an Eligible
20 Taxpayer under the IRS Free File program, and he qualified for a free federal return e-filing under
21 multiple offers available under the IRS Free File program. If he had been directed to the IRS Free
22 File website in 2019, Plaintiff Macklin would have found offers from multiple providers to file
23 his federal return for free.

24 74. In late 2018 and/or early 2019, Plaintiff Macklin saw television advertisements for
25 "TurboTax Free" in which the word "free" is repeated many times and a narrator at the end states
26 that "TurboTax Free is free. Free, free free free." One of the advertisements used a mock game
27 show setting and another involved a man walking away from a car in a mock action movie scene.
28

1 75. Plaintiff Macklin had filed a free return in 2018 using TurboTax. Based on his
2 prior filing of a tax return for free and based on the representations in the television commercials,
3 Plaintiff Macklin believed he qualified for a free tax return and that he could file a free tax return
4 through Defendant's TurboTax services.

5 76. In or about February 2019, Plaintiff Macklin searched for "TurboTax" using an
6 internet search engine and clicked on a link for filing a free return. Plaintiff Macklin landed on
7 the website for Defendant's Bait-and-Switch Program ("TurboTax Free Edition"), which
8 prominently displays representations such as "FREE guaranteed" and "\$0 to file," as set forth in
9 paragraphs 44 and 46-47 above.

10 77. Plaintiff Macklin began the process of filling out the information requested on
11 Defendant's website for Defendant's Bait-and-Switch Program. When he became uncertain about
12 certain questions, he requested assistance by clicking on a button or link presented on the website.
13 He then received a message from Defendant that a representative would contact him in three
14 days.

15 78. Plaintiff Macklin did not want to wait days for assistance, and renewed his effort
16 to complete his return without assistance. He was able to do so, but was informed at the end of the
17 process that there would be a fee.

18 79. Plaintiff Macklin was surprised by the fee disclosure because that was not his
19 experience from the previous year and it was contrary to what Defendant's television
20 commercials and Defendant's website had represented. Plaintiff Macklin did not believe the fee
21 disclosure was correct.

22 80. Because he had already spent considerable time and effort completing the tax
23 return fields in Defendant's Bait-and-Switch Program and because he believed, based on
24 Defendant's disclosure, that the fee would be deducted, if at all, from his anticipated federal
25 income tax refund, Plaintiff Macklin proceeded with the transaction. Despite proceeding with the
26 filing, Plaintiff Macklin did not believe he should have to pay any fee for the filing and
27 considered what he could do about the purported fee.
28

1 81. Plaintiff Macklin subsequently received an email notifying him that an amount of
2 about \$174 would be withdrawn from his bank account, and not deducted from any refund.

3 Plaintiff Macklin did not want any amount debited from his bank account and did not believe
4 Defendant was entitled to any fee for the filing of Plaintiff Macklin's tax return.

5 82. Plaintiff Macklin called Defendant to dispute the charge but was told he could not
6 dispute it.

7 83. In April 2019, approximately \$174 was debited from Plaintiff Macklin's bank
8 account and transferred to Defendant.

9 84. Plaintiff Macklin would not have paid for Defendant's TurboTax service if he had
10 been informed by Defendant at the outset of the process that he was eligible for free tax filing
11 from another tax service provider and had been directed to the websites for those truly free e-
12 filing services.

13 85. Plaintiff Macklin will continue to seek free tax filing services in the future and
14 expects to continue to be eligible for such services as mandated by the IRS. Because Defendant
15 disguises its Bait-and-Switch Program as being a true Free File program, Plaintiff Macklin is
16 likely to again be misled into spending time to complete tax forms through Defendant, including
17 providing his sensitive financial information, and paying for his tax filings, unless the injunctive
18 relief requested in this Complaint is awarded.

19 **F. Plaintiff Morse's Experiences**

20 86. Plaintiff Morse's AGI for 2018 was less than \$34,000, she was an Eligible
21 Taxpayer under the IRS Free File program, and she qualified for a free federal return e-filing
22 under multiple offers available under the IRS Free File program, including Defendant's Free File
23 Service.

24 87. If Plaintiff Morse had been directed to the website for Defendant's Free File
25 Service in 2019, Plaintiff Morse would have used Defendant's Free File Service to file her federal
26 return for free.

1 88. If Plaintiff Morse had been directed to the IRS Free File website in 2019, Plaintiff
2 Morse could have found offers from multiple providers to file her federal return for free.

3 89. Instead, Plaintiff Morse used Defendant's Bait-and-Switch Program to file her
4 2018 tax return this year.

5 90. Plaintiff Morse had used Defendant's Bait-and-Switch Program to file her tax
6 return the previous year, and had not been charged for that service.

7 91. When Plaintiff Morse visited Defendant's website and the webpages associated
8 with Defendant's Bait-and-Switch Program, she thought her tax filing in 2019 would be free. In
9 forming that belief and spending time providing information to Defendant to complete the fields
10 required in Defendant's Bait-and-Switch Program, she relied on Defendant's website
11 representations as referenced in paragraphs 44 and 46-47 above, the fact that she had filed the
12 previous year's tax return through Defendant's Bait-and-Switch Program at no cost, and a
13 Facebook advertisement she had seen for Defendant's Bait-and-Switch Program.

14 92. However, at the end of the process, after providing all the information required for
15 her tax return, Plaintiff Morse was notified that there would be a charge for this year's filing.
16 Based on the information that Defendant displayed on the screen, Plaintiff Morse concluded that
17 she was ineligible for free tax filing, so she completed the form. Plaintiff Morse was not provided
18 an option to transfer her information Defendant's Free File Service, even though she was eligible
19 to file for free under that program. Plaintiff Morse was ultimately charged \$84.98 for this year's
20 tax filing, on or about January 30, 2019.

21 93. Plaintiff Morse would not have paid for Defendant's TurboTax service this year if
22 Defendant had informed her that it and other tax service providers offer e-filing services online
23 that are truly free and had directed her to the websites for those free e-filing services.

24 94. Plaintiff Morse will continue to seek free tax filing services in the future and
25 expects to continue to be eligible for such services as mandated by the IRS. Because Defendant
26 disguises its Bait-and-Switch Program as being a true Free File program Plaintiff Morse is likely
27 to again be misled into spending time to complete tax forms through Defendant, including
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1 providing her sensitive financial information, and paying for her tax filings, unless the injunctive
2 relief requested in this Complaint is awarded.

3 **G. Because Defendant Intends to Continue Its Deceptive and Unfair Conduct, a**
4 **Public Injunction Is Needed to Protect the Public from Future Harm.**

5 95. While Defendant has reportedly issued refunds to some taxpayers who paid fees as
6 a result of Defendant's Bait-and-Switch Program, Defendant has not ended the Bait-and-Switch
7 Program, and thus clearly intends to continue extracting money from taxpayers who are entitled
8 to file returns for free and who should be directed to Defendant's Free File Service or to the IRS
9 Free File program's website.

10 96. Among other things, Defendant intends to continue (1) operating and aggressively
11 marketing its Bait-and-Switch Program, including through television, radio, social media, banner
12 advertising, paid search advertising, affiliate marketing programs, and search engine optimization
13 programs, (2) hiding the availability of Defendant's Free File Service by preventing search
14 engines from indexing key pages and content of those webpages, by excluding Defendant's Free
15 File Service from affiliate marketing programs, and by otherwise depressing search engine
16 rankings, (3) using the deceptive word "free" for its Bait-and-Switch Program, and targeting its
17 marketing (affiliate marketing and otherwise) for Defendant's Bait-and-Switch Program to
18 capture people searching for "free" tax filing services, in order to confuse its Bait-and-Switch
19 Program with the IRS Free File program and to mislead taxpayers because Defendant's Bait-and-
20 Switch Program is not actually free for most taxpayers, including those taxpayers who qualify for
21 IRS Free File, (4) failing to provide a clear and prominent disclosure that the "free" portion of
22 Defendant's Bait-and-Switch Program is not Defendant's Free File Service and failing to clearly
23 identify the differences between the programs, (5) failing to clearly inform taxpayers of their
24 eligibility for the IRS Free File program, (6) failing to inform users at the earliest opportunity of
25 their ineligibility for free filing under the Bait-and-Switch Program and to direct them to other
26 truly free filing services, or to transfer to Defendant's Free File program any information they
27 have already entered so that it need not be reentered, (7) prompting users for payment and selling
28

1 paid services without clearly informing those users of their right to free tax services, (8) failing to
2 clearly and accurately inform taxpayers that any information they have provided to Defendant
3 will automatically and conveniently be transferred to Defendant's Free File Service if the
4 taxpayer elects to proceed with Defendant's Free File Service and then immediately transferring
5 all relevant information a taxpayer has provided to Defendant to Defendant's Free File Service if
6 the taxpayer elects to proceed with Defendant's Free File Service, and (9) unfairly competing
7 with, undermining, and supplanting both Defendant's Free File Service and the IRS Free File
8 program generally.

9 97. Defendant profits from the public's lack of awareness of or confusion about the
10 various IRS Free File offers, from Defendant's efforts to minimize public awareness of the IRS
11 Free File offers and the ways to take advantage of them, and from the victims of Defendant's
12 Bait-and-Switch Program.

13 98. To protect these illicit and inequitable profits and to maintain space in which to
14 conduct its deceptive and unfair practices with respect to taxpayers who are entitled to free tax
15 preparation services, Defendant has spent millions of dollars lobbying to make sure that the IRS
16 is legally prohibited from offering its own tax preparation and filing service, which would make
17 tax filing easy and free for most taxpayers and thereby substantially reduce Defendant's profits
18 from its Paid TurboTax Programs.¹

19 99. Defendant's investment of money in such lobbying efforts shows a determination
20 to minimize the number of people who actually file tax returns for free, an intent to continue to
21 profit from taxpayers who should be filing for free, and thus an intent to undermine the IRS Free
22 File program and the Eighth MOU.

23 ¹ See, e.g., [https://www.propublica.org/article/congress-is-about-to-ban-the-government-from-](https://www.propublica.org/article/congress-is-about-to-ban-the-government-from-offering-free-online-tax-filing-thank-turbotax)
24 [offering-free-online-tax-filing-thank-turbotax](https://www.propublica.org/article/congress-is-about-to-ban-the-government-from-offering-free-online-tax-filing-thank-turbotax) (last accessed April 23, 2019) and
25 <https://www.propublica.org/article/how-the-maker-of-turbotax-fought-free-simple-tax-filing> (last
26 accessed April 23, 2019). Defendant has further undertaken massive lobbying efforts to block or
27 repeal state legislation providing free tax filing on state tax returns, most prominently in
28 California recently. See Dennis Ventry, Intuit's end-run: Once again, it's targeting two free
programs that help California taxpayers file their state returns, L.A. Times, July 21, 2010, at
<http://articles.latimes.com/2010/jul/21/opinion/la-oe-ventry-intuit-20100721> (last accessed April
23, 2019).

1 100. Moreover, Defendant's practices are poised to become worse, not better, in the
2 future. Because the IRS is allowed under current law to develop its own e-filing system,
3 Defendant (for now, but likely not for long) has at least some incentive to moderate its behavior.
4 In theory, if Defendant's conduct were to go too far and there were too many complaints, the IRS
5 could enter the market and eliminate much of Defendant's profits. At the same time, Defendant's
6 incentive is to try to do the bare minimum to avoid such a result, without sacrificing too much of
7 the profits it currently earns through the Bait-and-Switch Program. By offering fig-leaf solutions
8 to its much larger problems, Defendant is attempting to convince the IRS that it does not need to
9 develop its own system. More significantly at this point, Defendant is attempting to ensure the
10 passage of the legislation that is on track to prohibit the IRS from developing its own generally
11 available, easy-to-use, cost-free e-filing system (*see* footnote 1 herein). Once that law gets passed,
12 and the IRS is prohibited from developing an e-filing system, Defendant will no longer face any
13 deterrence at all from the threat of IRS competition.

14 101. To protect the general public from the threat of future injury, Plaintiffs seek a
15 public injunction, under *McGill v. Citibank, N.A.*, 2 Cal. 5th 945 (2017), prohibiting Defendant
16 from continuing its deceptive and unfair practices.

17 102. The most effective remedy for Defendant's, deceptive, unfair, and unlawful
18 conduct is a judicial order prohibiting Defendant from marketing and operating a supposedly
19 "free" service in competition with Defendant's Free File Service. The only "free" e-filing service
20 Defendant should be allowed to offer to the public is Defendant's Free File Service. If Defendant
21 wishes to offer free filing to additional taxpayers beyond those eligible for its Free File service, it
22 can simply expand the eligibility for its Free File service; there is no need to offer a competing
23 "free" service. Defendant should be prohibited from using the word "free" in connection with
24 services other than Defendant's Free File Service. Defendant should be prohibited from
25 advertising any alternative free tax filing service (including purchasing search advertisements in
26 connection with the search term "free") other than advertisements for Defendant's Free File
27 Service.
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1 103. In the event Defendant is allowed to continue to offer a “free” service in addition
2 to Defendant’s Free File Service, then through a prominent disclosure on the home page of the
3 alternative free service, on other webpages/screens throughout the process of such service, and on
4 any page that indicates that a taxpayer does not qualify for the alternative free service or proposes
5 an upgrade or payment for Defendant’s Paid TurboTax Programs: (a) Defendant must make clear
6 that the alternative free service is not Defendant’s Free File Service; (b) Defendant must clearly
7 identify the differences between Defendant’s Free File Service and the alternative free service;
8 (c) Defendant must disclose that there are other free filing offers available through the IRS Free
9 File program; (d) Defendant provide a prominent link to Defendant’s Free File Service and to the
10 IRS Free File Landing Page; and (e) Defendant must unequivocally inform taxpayers at the
11 earliest feasible point—including on the landing page for the alternative free service and as soon
12 as the taxpayer enters any response (such as the taxpayer’s AGI) that is sufficient to determine the
13 taxpayer’s eligibility for the following services—whether they are eligible or ineligible for
14 Defendant’s Free File Service, whether they are generally eligible or ineligible for other offers
15 under the IRS Free File program, and whether they are eligible or ineligible for the alternative
16 free e-filing service. At any point in which the choice to proceed with Defendant’s Free File
17 Service is presented, Defendant must clearly inform the taxpayer that any information they have
18 provided to Defendant and that would be used for Defendant’s alternative free filing service will
19 automatically be transferred to Defendant’s Free File Service and, if the taxpayer elects to
20 proceed with Defendant’s Free File Service, Defendant must immediately transfer information the
21 taxpayer has already provided to Defendant and that can be used for Defendant’s Free File
22 Service.

23 104. In addition, Defendant should be prohibited from engaging in practices designed to
24 lower the prominence and ranking of Defendant’s Free File Service in search results. In
25 particular, Defendant should be prohibited from interfering with any search engine robot crawling
26 or indexing that would tend to increase the ranking of the webpages for Defendant’s Free File
27 Service. And Defendant should be prohibited from using search advertisements and search engine
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1 optimization techniques to promote the ranking of any competing service (such as its Bait-and-
2 Switch Program or any other Paid TurboTax Program) to the prejudice of Defendant's Free File
3 Service or to the prejudice of the IRS Free File program.

4 105. Absent injunctive relief, Plaintiffs and the public at large are likely to be misled or
5 confused again by Defendant's practices. Defendant can easily change the name of its Free File
6 Service and/or its competing Bait-and-Switch Program (and the terms Defendant uses to describe
7 and market those services), Defendant can also change the conditions of and/or landing page for
8 its Free File Service, and Defendant can deploy search engine optimization strategies to divert
9 taxpayers away from Defendant's Free File Service and the IRS Free File program and toward
10 alternative, competing services, such that Plaintiffs and other members of the public will not be
11 sure (a) whether they are actually proceeding with Defendant's Free File Service or some other
12 service or (b) whether they are actually eligible for Defendant's Free File Service or some other
13 service.

14 **PLAINTIFFS' FIRST CAUSE OF ACTION**

15 **(Violation of the Consumers Legal Remedies Act (the "CLRA"), California Civil Code §** 16 **1750, *et seq.*)**

17 106. Plaintiffs reallege and incorporate the paragraphs of this Complaint as if set forth
18 herein.

19 107. Defendant's actions, representations and conduct have violated, and continue to
20 violate the CLRA, because they extend to transactions that are intended to result, or which have
21 resulted, in the sale of products to consumers.

22 108. Each Plaintiff is a "consumer" as that term is defined by the CLRA in California
23 Civil Code § 1761(d).

24 109. The tax service that Plaintiffs purchased from Defendant was a "service" within
25 the meaning of California Civil Code § 1761(b).

26 110. Defendant's acts and practices, set forth in this Complaint, led Plaintiff and other
27 members of the general public to falsely believe that "TurboTax Free Edition" is free for most
28

1 taxpayers. In truth, “TurboTax Free Edition” was and is subject to several undisclosed and
2 surprising conditions and was and is not free for most taxpayers. Accordingly, Defendant’s claims
3 that “TurboTax Free Edition” is “free,” “FREE guaranteed,” “\$0 to file,” “Free federal & state
4 taxes,” “Free, free free free,” and the like are false.

5 111. By engaging in the actions, representations and conduct set forth in this
6 Complaint, Defendant has violated, and continue to violate, § 1770(a)(5), § 1770(a)(7),
7 § 1770(a)(9), § 1770 (a)(10), and § 1770(a)(13) of the CLRA. In violation of California Civil
8 Code §1770(a)(5), Defendant’s acts and practices constitute improper representations that the
9 goods they sell have sponsorship, approval, characteristics, ingredients, uses, benefits, or
10 quantities, which they do not have. In violation of California Civil Code §1770(a)(7), Defendant’s
11 acts and practices constitute improper representations that the “TurboTax Free Edition” is of a
12 particular standard, quality, or grade (in particular, that is free, simple, and available to most
13 taxpayers), when it is not. In violation of California Civil Code §1770(a)(9), Defendant falsely,
14 deceptively, and unfairly markets and advertises its “TurboTax Free Edition” as free for most
15 taxpayers, with the intent to direct users into paid services, such that users do not receive
16 Defendant’s services as advertised. In violation of California Civil Code §1770(a)(10), Defendant
17 falsely, deceptively, and unfairly markets and advertises its “TurboTax Free Edition” as free for
18 most taxpayers, with the intent to not to supply reasonably expected demand for such free e-
19 filings but instead to direct users into paid services. Finally, in violation of California Civil Code
20 §1770(a)(13), Defendant makes false and misleading statements of fact concerning the existence
21 of and amounts of price reductions for its tax e-filing services.

22 112. Plaintiffs request that this Court enjoin Defendant from continuing to employ the
23 unlawful methods, acts and practices alleged herein pursuant to California Civil Code
24 § 1780(a)(2). If Defendant is not restrained from engaging in these types of practices in the
25 future, Plaintiffs and the general public will continue to suffer harm.

26 113. Plaintiffs also request that this Court award their costs and reasonable attorneys’
27 fees pursuant to California Civil Code § 1780(d).
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1 121. The aforementioned practices, which Defendant used, and continue to use, to its
2 significant financial gain, also constitutes unlawful competition and provides an unlawful
3 advantage over Defendant's competitors as well as injury to the general public.

4 122. As a direct and proximate result of such actions, Plaintiffs and other members of
5 the general public have suffered, and continue to suffer, injury in fact and have lost money and/or
6 property as a result of such false, deceptive and misleading advertising in an amount which will
7 be proven at trial, but which is in excess of the jurisdictional minimum of this Court.

8 123. Plaintiffs seek, on behalf of themselves and the general public, a declaration that
9 the above-described practices constitute false, misleading and deceptive advertising.

10 124. Plaintiffs seek, on behalf of themselves and the general public, an injunction to
11 prohibit Defendant from continuing to engage in the false, misleading and deceptive advertising
12 and marketing practices complained of herein. Such misconduct by Defendant, unless and until
13 enjoined and restrained by order of this Court, will continue to cause injury in fact to the general
14 public and the loss of money and property in that Defendant will continue to violate the laws of
15 California, unless specifically ordered to comply with the same. This expectation of future
16 violations will require current and future taxpayers to repeatedly and continuously seek legal
17 redress in order to recover monies paid to Defendant to which it is not entitled. Plaintiffs and
18 other members of the general public have no other adequate remedy at law to ensure future
19 compliance with the California Business and Professions Code alleged to have been violated
20 herein.

21 **PLAINTIFFS' THIRD CAUSE OF ACTION**

22 **(Unlawful, unfair, and fraudulent trade practices violation of Business and Professions**
23 **Code § 17200, et seq.)**

24 125. Plaintiffs reallege and incorporate by reference the paragraphs of this Complaint as
25 if set forth herein.

26 126. Within four (4) years preceding the filing of this lawsuit, and at all times
27 mentioned herein, Defendant has engaged, and continue to engage, in unlawful, unfair, and
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1 fraudulent trade practices in California by engaging in the unlawful, unfair, and fraudulent
2 business practices outlined in this complaint.

3 127. In particular, Defendant has engaged, and continue to engage, in unlawful
4 practices by, without limitation, violating the following state laws: (i) the CLRA as described
5 herein; and (ii) the FAL as described herein.

6 128. In particular, Defendant has engaged, and continue to engage, in unfair and
7 fraudulent practices (a) by misrepresenting that “TurboTax Free Edition” is free for most
8 taxpayers, (b) by using marketing and search strategies to direct taxpayers to “TurboTax Free
9 Edition” when they should be directed to the IRS Free File program and to e-filing service offers
10 that truly are free for the taxpayers, and (c) by violating and/or circumventing the provisions of
11 the Eighth MOU as set forth above.

12 129. In truth, “TurboTax Free Edition” was and is subject to several undisclosed and
13 surprising conditions and was and is not free for most taxpayers, so Defendant’s claims that
14 ”TurboTax Free Edition” is “free,” “FREE guaranteed,” “\$0 to file,” “Free federal & state taxes,”
15 “Free, free free free,” and the like are false.

16 130. Moreover, Defendant has unfairly competed with and continues to unfairly
17 compete with the IRS Free File program and the truly free e-filing services available under that
18 program, including Defendant’s own Free File Service. Defendant has profited and continues to
19 profit from its unfair, deceptive, and unlawful conduct.

20 131. Plaintiffs and members of the general public relied to their detriment on
21 Defendant’s unlawful, unfair, and fraudulent business practices. Had Plaintiffs and members of
22 the general public been adequately informed and not deceived by Defendant, they would have
23 acted differently by not paying for Defendant’s Paid TurboTax Programs, and instead they would
24 have used one of the IRS Free File services.

25 132. Defendant’s acts and omissions are likely to deceive and mislead the general
26 public.
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1 133. Defendant engaged in these unfair, deceptive and unlawful practices to increase its
2 profits. Accordingly, Defendant has engaged in unlawful trade practices, as defined and
3 prohibited by section 17200, *et seq.* of the California Business and Professions Code.

4 134. The aforementioned practices, which Defendant has used to its significant
5 financial gain, also constitute unlawful competition and provide an unlawful advantage over
6 Defendant's competitors as well as injury to the general public.

7 135. As a direct and proximate result of such actions, Plaintiffs and other members of
8 the public, have suffered and continue to suffer injury in fact and have lost money and/or property
9 as a result of such deceptive and/or unlawful trade practices and unfair competition in an amount
10 which will be proven at trial, but which is in excess of the jurisdictional minimum of this Court.
11 Among other things, Plaintiffs and other members of the general public lost the amount of money
12 they paid as a result of Defendant's practices.

13 136. As a direct and proximate result of such actions, Defendant has enjoyed, and
14 continue to enjoy, significant financial gain in an amount which will be proven at trial, but which
15 is in excess of the jurisdictional minimum of this Court.

16 137. Plaintiffs seek, on behalf of themselves and the general public, a declaration that
17 the above-described trade practices are fraudulent, unfair, and/or unlawful.

18 138. Plaintiffs seek, on behalf of themselves and the general public, an injunction to
19 prohibit Defendant from continuing to engage in the deceptive and/or unlawful trade practices
20 complained of herein. Such misconduct by Defendant, unless and until enjoined and restrained by
21 order of this Court, will continue to cause injury in fact to the general public and the loss of
22 money and property in that Defendant will continue to violate the laws of California, unless
23 specifically ordered to comply with the same. This expectation of future violations will require
24 current and future taxpayers to repeatedly and continuously seek legal redress in order to recover
25 monies paid to Defendant to which it is not entitled. Plaintiffs and members of the general public
26 have no other adequate remedy at law to ensure future compliance with the California Business
27 and Professions Code alleged to have been violated herein.
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REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the general public, respectfully requests that the Court enter judgment against Defendant as follows:

A. A public injunction temporarily and permanently enjoining Defendant from continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint, including without limitation paragraphs 6-7, 30-72, and 95-105, and including without limitation as follows:

- 1) prohibiting Defendant from marketing and operating any supposedly “free” service in addition to or in competition with Defendant’s Free File Service, including prohibiting Defendant from advertising any other service as “free” and from purchasing search advertisements, other than advertisements for Defendant’s Free File Service, in connection with the search term “free;”
- 2) as an alternative to the public injunction described immediately above, a public injunction requiring Defendant, on the home page of any alternative free tax filing service it may offer, on other webpages or screens throughout the process of using such service, and on any page that indicates that a taxpayer does not qualify for the alternative free service or proposes an upgrade or payment for Defendant’s Paid TurboTax Programs, (a) to provide a clear and prominent disclosure that the alternative free service is not Defendant’s Free File Service; (b) to clearly identify the differences between Defendant’s Free File Service and the alternative free service; (c) to disclose that there are other free filing offers available through the IRS Free File program; (d) to provide a prominent link to Defendant’s Free File Service and to the IRS Free File Landing Page; (e) to unequivocally inform taxpayers at the earliest feasible point—including on the landing page for the alternative free service and/or as soon as the taxpayer enters any response (such as the taxpayer’s AGI) that is sufficient to determine the taxpayer’s eligibility for the following services—

1 whether they are eligible or ineligible for Defendant's Free File Service,
2 whether they are generally eligible or ineligible for other offers under the IRS
3 Free File program, and whether they are eligible or ineligible for Defendant's
4 alternative free e-filing service; (f) to clearly and accurately inform taxpayers
5 that any information they have provided to Defendant and that would be used
6 for Defendant's alternative free filing service will automatically and
7 conveniently be transferred to Defendant's Free File Service if the taxpayer
8 elects to proceed with Defendant's Free File Service; and (g) to immediately
9 transfer all relevant information a taxpayer has provided to Defendant to
10 Defendant's Free File Service if the taxpayer elects to proceed with
11 Defendant's Free File Service; and

- 12 3) prohibiting Defendant from engaging in practices designed to lower the
13 prominence and ranking of Defendant's Free File Service in search engine
14 results, including prohibiting Defendant from disallowing any search engine
15 robot crawling and indexing that would tend to increase the ranking of the
16 webpages for Defendant's Free File Service, and prohibiting Defendant from
17 using search advertisements and search engine optimization techniques to
18 promote the ranking of any competing service to the prejudice of Defendant's
19 Free File Service or to the prejudice of the IRS Free File program;
- 20 4) prohibiting Defendant from initiating, directing, or using any affiliate
21 marketing program as part of a Bait-and-Switch Program or that refers
22 taxpayers to a Bait-and-Switch Program, including any affiliate marketing
23 program that targets search terms involving "free" filing or "free" tax returns
24 and then paying affiliates when those individuals seeking "free" services are
25 ultimately referred to and/or charged for Defendant's Paid TurboTax
26 Programs;
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Exhibit 1

EXHIBIT 1

I, Seth A. Safier, declare:

1. I am an attorney licensed to practice law in the State of California and admitted to practice before this Court, and am a partner of the law firm Gutride Safier LLP. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would competently testify thereto. I am counsel for Plaintiffs Macklin and Morse in this action.

2. I submit this Declaration pursuant to California Code of Civil Procedure section 2215.5 and California Civil Code section 1780(d).

3. I am informed and believe that Defendant Intuit, Inc.'s principal place of business is located at 2700 Coast Avenue, Mountain View, California 94043. (Attached is a true and correct print out from the website of the California Secretary of State.)

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Executed this 1st day of May, 2019, in San Francisco, California.



Seth A. Safier

Business Search - Entity Detail

The California Business Search is updated daily and reflects work processed through Tuesday, April 30, 2019. Please refer to document [Processing Times](#) for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity. Not all images are available online.

C1851241 INTUIT INC.

Registration Date:	02/03/1993
Jurisdiction:	DELAWARE
Entity Type:	FOREIGN STOCK
Status:	ACTIVE
Agent for Service of Process:	<u>CORPORATION SERVICE COMPANY WHICH WILL DO BUSINESS IN CALIFORNIA AS CSC - LAWYERS INCORPORATING SERVICE (C1592199)</u> To find the most current California registered Corporate Agent for Service of Process address and authorized employee(s) information, click the link above and then select the most current 1505 Certificate.
Entity Address:	2700 COAST AVENUE MOUNTAIN VIEW CA 94043
Entity Mailing Address:	2700 COAST AVENUE MOUNTAIN VIEW CA 94043

A Statement of Information is due EVERY year beginning five months before and through the end of February.

Document Type	↕	File Date	↕	PDF
SI-COMPLETE		12/27/2018		
PUBLICLY TRADED DISCLOSURE		12/27/2018		
PUBLICLY TRADED DISCLOSURE		12/27/2017		
PUBLICLY TRADED DISCLOSURE		12/23/2016		
SI-COMPLETE		12/28/2015		
PUBLICLY TRADED DISCLOSURE		12/23/2011		
PUBLICLY TRADED DISCLOSURE		12/29/2010		
PUBLICLY TRADED DISCLOSURE		12/30/2009		
PUBLICLY TRADED DISCLOSURE		12/24/2008		
PUBLICLY TRADED DISCLOSURE		12/27/2007		
PUBLICLY TRADED DISCLOSURE		12/22/2006		
PUBLICLY TRADED DISCLOSURE		12/27/2005		
PUBLICLY TRADED DISCLOSURE		12/23/2004		
PUBLICLY TRADED DISCLOSURE		11/21/2003		Image unavailable. Please request paper copy.
AMENDED REGISTRATION		05/04/1993		
REGISTRATION		02/03/1993		

* Indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Please refer to California Corporations Code [section 2114](#) for information relating to service upon corporations that have surrendered.
- For information on checking or reserving a name, refer to [Name Availability](#).
- If the image is not available online, for information on ordering a copy refer to [Information Requests](#).
- For information on ordering certificates, status reports, certified copies of documents and copies of documents not currently available in the Business Search or to request a more extensive search for records, refer to [Information Requests](#).
- For help with searching an entity name, refer to [Search Tips](#).
- For descriptions of the various fields and status types, refer to [Frequently Asked Questions](#).

Modify Search

New Search

Back to Search Results

Exhibit 2

**EIGHTH MEMORANDUM OF UNDERSTANDING ON SERVICE STANDARDS AND
DISPUTES
Between the Internal Revenue Service and Free File, Incorporated**

This Eighth Memorandum of Understanding (“MOU”) is entered into as of the date of the last signature on this document between Free File, Inc. (“FFI”) and the IRS.

This MOU is a 3-year follow-on agreement entered between the parties, and that has a termination date of October 31, 2021.

Preamble

WHEREAS, FFI (then Free File Alliance LLC) and the IRS entered into a 3-year agreement which was published in the Federal Register (Vol. 67, No. 153, page 51621) on August 8, 2002, and executed on October 30, 2002, (IRS Agreement) that set forth parameters to which industry members of the Alliance would offer online tax preparation and filing services to taxpayers least able to afford e-filing tax returns at no cost to such taxpayers (Services), and pursuant to which it was agreed that the Alliance will offer the Services and the IRS will provide taxpayers with links to the Services offered by the Alliance participants through a web page, which is hosted at irs.gov with links from www.usa.gov; and

WHEREAS, on October 29, 2005, the Alliance and the IRS agreed to amend and extend the IRS Agreement for an additional 4 years (2005 IRS Agreement); and

WHEREAS, the Alliance and the IRS agreed to amend and extend the IRS Agreement for an additional 5 years from October 30, 2009, through October 30, 2014 (2009 Free On-Line Electronic Tax Filing Agreement Amendment); and

WHEREAS, the Alliance applied for 501(C)(3) tax-exempt organization status, and the IRS granted the FFI such status in 2012; and

WHEREAS, FFI and the IRS agreed to amend and extend the Agreement for one year, from April 30, 2014 to December 1, 2015, with the intention to negotiate this multi-year agreement; and

WHEREAS, the IRS has hosted and maintained its website in accordance with the IRS Agreement; and

WHEREAS, the IRS publishes annually to all FFI Members its specifications, requirements, and restrictions for a fillable form program and FFI has agreed to permit one or more Members to provide the IRS an unbranded product that meets the IRS specifications for an unbranded fillable form utility; and

WHEREAS, FFI Members are innovators who have introduced innovations through their commercial products that make tax preparation easier, more efficient, and less prone to human error; and

WHEREAS, IRS believes Free File should be a place for testing and delivering innovation to taxpayers, and there is a desire to have these product innovations provided for free in the Free File Members' software programs, FFI and IRS agree that specific, continuous, and ongoing efforts should be made to provide further innovations for the benefit of Free File taxpayers over the five-year term of this Memorandum of Understanding.

NOW THEREFORE, for good and valuable considerations, the parties, intending to be legally bound by this MOU, hereby agree as follows:

ARTICLE 1 DEFINITIONS

- 1.1 “Affiliate” of the Member, Executive Director, or other entity shall mean any Person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the Member, Executive Director, or other entity, as applicable. The term “control,” as used in the immediately preceding sentence, shall mean with respect to a corporation or limited liability company the right to exercise, directly or indirectly, more than 50 percent of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity, or association, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.
- 1.2 “FFI Filers” shall mean those taxpayers with an Adjusted Gross Income (AGI) equal to or less than 70 percent of all United States (U.S.) taxpayers or below for the prior year, including those least able to afford e-filing tax returns, based upon verifiable characteristics in their tax return and, as a result, who for free, online tax return preparation and filing services are offered by an individual Member.
- 1.3 “Bankruptcy” shall mean: (a) the filing of an application by the Member for, or its consent to, the appointment of a trustee, receiver, or custodian of its assets; (b) the entry of an order for relief with respect to the Member in proceedings under the U.S. Bankruptcy Code, as amended or superseded from time to time; (c) the making by the Member of a general assignment for the benefit of creditors; (d) the entry of an order, judgment, or decree by any court of competent jurisdiction appointing a trustee, receiver, or custodian of the assets of the Member unless the proceedings and the Person appointed are dismissed within ninety (90) days; or (e) the failure by the Member generally to pay its debts as the debts become due within the meaning of Section 303(h)(1) of the U.S. Bankruptcy Code, as determined by the Bankruptcy Court, or the admission in writing of its inability to pay its debts as they become due.
- 1.4 “Code” shall mean the Internal Revenue Code of 1986, as amended from time to time, and the provisions of succeeding law.
- 1.5 “Coverage” shall mean the lowest 70 percent of taxpayer population calculated using AGI. The IRS uses the prior year tax return information to compute the AGI amount that equates to 70 percent of the tax return population. The number of taxpayers covered each year will be adjusted for each filing season thereafter based on taxpayer population and income changes, but the agreed upon percentage of coverage will not change.
- 1.6 The “IRS” shall mean the Internal Revenue Service.
- 1.7 “Executive Director” shall mean the Executive Director of FFI.
- 1.8 “Member’s Free File Website” shall mean Members’ websites that offer free, online tax return preparation and filing services to FFI Filers.

- 1.9 “Member” shall mean each company in the electronic tax preparation and filing industry who is a member in good standing with FFI
- 1.10 “Member Free File Landing Page” shall mean the first page a taxpayer sees when leaving the IRS site to the Member company’s site.
- 1.11 “New Market Entrant” shall mean a Person who is not yet a Member that intends to offer Services in the upcoming tax season but has not done so for past seasons.
- 1.12 “Person” shall mean an individual, partnership, limited partnership, limited liability company, corporation, association, or any other entity.
- 1.13 “Services” Shall mean free, online tax return preparation and Filing of Federal individual income tax returns.
- 1.14 “Software Programs” shall mean the software program a Member uses to provide online tax return preparation and filing services to taxpayers.
- 1.15 “Treasury Regulations” shall, unless the context clearly indicates otherwise, mean the regulations in force as final or temporary that have been issued by the U.S. Department of Treasury pursuant to its authority under the Code, and any successor regulations.
- 1.16 The “IRS Website” refers to www.irs.gov (or IRS.gov).
- 1.17 The “IRS Free File Website” shall mean the website hosted and maintained by the IRS through which the Services are offered to taxpayers.
- 1.18 The “IRS Free File Landing Page” shall mean the introductory IRS Free File splash screen or landing site within the IRS Website.
- 1.19 “Unbranded Fillable Form Utility” shall mean an unbranded software product that is forms based and provided by a FFI Member in compliance with the particular requirements, limitations, and standards applicable to that service as set forth in the IRS Free File Program Fillable Forms Utility Specifications dated December 9, 2008, and is chosen by the IRS for placement on the IRS Website.
- 1.20 “State Free File Program” shall mean those programs in states that offer free preparation and e-filing of individual tax returns based on criteria that are materially consistent with the federal Free File program, and which do not provide taxpayer-funded online software for tax preparation and e-filing. In 2014, there are 21 states and the District of Columbia participating in the State Free File Program (see

Appendix A) but this definition applies to all states meeting the above criteria in a given year, and the list of eligible states may change from year to year..

- 1.21 “Non-Free File States” shall mean those states that have their own taxpayer-funded online software for tax preparation and e-filing.
- 1.22 “Active Duty Military” shall mean those individual taxpayers currently serving full time in the armed forces, including the United States Army, Navy, Marines, Air Force, Coast Guard, and National Guard, and whose income equates to the lowest 70% of the national AGI.

ARTICLE 2

FFI AND IRS OBJECTIVES

Members shall work in concert with the IRS to increase electronic filing of tax returns, which includes extending the benefits of online federal tax preparation and electronic filing to economically disadvantaged and underserved populations at no cost to either the individual user or to the public treasury. Further, the IRS and FFI (previously Free File Alliance or Alliance) agree that to serve the greater good and ensure the long-term stability of FFI, the scope of this program is focused on covering the taxpayers least able to afford e-filing their returns on their own. In recognition of this commitment, the federal government has pledged to not enter the tax preparation software and e-filing services marketplace. Members shall also:

- 2.1 Make tax return preparation and filing easier and reduce the burden on individual taxpayers, particularly the economically disadvantaged and underserved populations;
- 2.2 Support the IRS’s statutory goals of increased electronic filing, pursuant to the IRS Restructuring and Reform Act of 1998;
- 2.3 Provide greater service and access to the Services to taxpayers; and
- 2.4 Implement one of the proposals in the President’s Fiscal Year 2003 budget, specifically to encourage further growth in electronic filing by providing taxpayers the option to file their tax return online without charge using cooperation with, and encouraging competition within, the private sector.

ARTICLE 3 TRANSPARENCY IN MANAGEMENT

To manage the program in a transparent manner, the IRS will utilize the then current AGI number which equates to the lowest 70 percent of the taxpayers to manage the program, and will not accept or post any offer by a Member which exceeds this AGI amount. The IRS will describe this limitation on the IRS Free File website. FFI will not have a role in this IRS management process.

ARTICLE 4 STANDARDS OF PRACTICE

4.1 Level of Service.

4.1.1 Each Member and New Market Entrant shall:

- (i) Be engaged in the electronic tax preparation and filing industry;
- (ii) Have processed a cumulative total of 2,500 online returns during previous years, or has processed 25,000 e-file returns before becoming a Member;
- (iii) Meet a 75 percent acceptance rate for electronic returns for traditional Free File throughout the filing season, excluding business rules and any subsequent codes associated with prior year AGI and self-select pin mismatches. The IRS will work with FFI to identify any business rule errors that are a result of new legislation and/or policy. Specific business rule errors may be excluded from the computation of a company's acceptance rate.
- (iv) Meet any increased standard agreed to for subsequent years by the IRS and FFI

4.1.2 Any Member who does not meet the minimum acceptance rate set out in 4.1.1 (iii) and (iv) above may be removed from the IRS Free Website.

4.1.3 Each Member and New Market Entrant shall:

- (i) Make its Services available to not less than 10 percent and not more than 50 percent of the individual taxpayer population, or approximately seventy million (70,000,000) taxpayers, within the Coverage, as annually adjusted through IRS analysis of the taxpayer database to determine the lower 70% of all U.S. taxpayers. Additionally, any free services offered under this MOU to Active Duty Military members who meet the requirement of earning no more than the lowest 70% of the national AGI shall be exempt from this service cap of 50% of the taxpayer population. Notwithstanding other terms in this MOU, this provision exempting eligible Active Duty Military members from the service cap shall become effective in January 2015;

- (ii) Offer its Services on a non-discriminatory basis;
- (iii) Be an authorized IRS e-File Provider in accordance with IRS Revenue Procedure 2005-60;
- (iv) Be in compliance with applicable Department of Treasury/IRS rules, including, but not limited to, 31 C.F.R. Part 10, IRS Revenue Procedure 2005-60, current versions of IRS Publications 1345, 1345-A and 3112, 4164, Modernized e-File (MeF) Guide for Software Developers and Transmitters, 1436 Test Package for Electronic Filers of Individual Income Tax Returns for Tax Year 2014 and IRC Section 7216;
- (v) Possess and provide appropriate documentation to the IRS and the Executive Director demonstrating they have acquired third party security and privacy certifications which are applicable for the period the company is actively listed on the IRS Free File Website;
- (vi) Have appropriate logos or seals (for both privacy and security) from acceptable and recognized third party privacy and security certification providers placed in clearly visible locations on the Member's Free File Landing Page; and
- (vii) New Market Entrants shall self-certify in writing to the Executive Director, and available upon request to the IRS, that the New Market Entrant has sufficient technical capacity to meet the Level of Service requirements as set forth in this MOU and then current FFI Operating Agreement and are commercial tax preparation software providers aside from their FFI offering.

4.1.4 Participation of Non-Profits. Non-Profit Organizations will be allowed to participate in the Free File program provided that they meet all of the requirements specified in the MOU, including, but not limited to, that their services and products cannot be paid for with Government funds.

4.2 OMITTED BY INTENTION:

4.3 Only one version of each Software Program permitted other than an unbranded fillable forms utility.

4.3.1 Only one version of a Software Program is permitted per Member, except that any Member that chooses to offer an unbranded fillable form Software Program may offer that product in addition to the Software Program that is accessible from the Member's Free File Website. This provision does not preclude a Member from using the same Software Program for access both from the Member's Free File Website and as an unbranded fillable form accessible from the IRS's website. A Member may own the copyright in a Software Program or have a valid license to use a Software Program, but a Software Program may not be used by more than one Person to obtain FFI membership.

4.3.2 Members and/or any New Market Entrant applying for membership with FFI will provide the Executive Director with information as requested by the Executive Director to permit a determination as to whether Software Programs are duplicative and/or substantially similar based upon features, functions, and/or general characteristics and would violate Section 4.3.1. The IRS or the Executive Director shall review the following list of characteristics (i) through (vii), and request any facts needed from the Member or possible New Market Entrant that will assist in this evaluation. No single characteristic below is dispositive of any determination as to whether software is identical or similar. The IRS or the Executive Director may weigh items (i), (ii) and (iii) most heavily, but can take into account any fact or factor:

- (i) The degree to which the underlying software programs are substantially identical or similar;
- (ii) Changes in the logo, color, and presentation do not transform similar software programs into different versions;
- (iii) The degree to which two software programs have a look or feel that is identical or similar;
- (iv) The relationship, if any, of the respective owners of companies; for example, the degree to which corporate officers are the same or dissimilar; whether locations of incorporation are the same or similar, whether the same Uniform Resource Locator is being used by more than one entity; the degree to which two member companies use the same third party developer, etc.;
- (v) The degree to which the company's revenue is related to FFI or principally through commercial sales of software, tax preparation services, and electronic filing to the general public;
- (vi) The degree to which each company has adequate financial resources;
- (vii) The degree to which each company has the necessary organization, experience, operational controls, and technical skills to participate in the tax software preparation industry;
- (viii) The degree to which each company has the necessary technical equipment and facilities; provided that companies are permitted to sell, license, or otherwise transfer software programs for services utilized in FFI offerings, but such sale, license, or other arrangement may be reviewed for its underlying purpose and must be consistent with this entire section; or
- (ix) The degree to which the company has offered and sold tax preparation software and e-filing services competitively in substantial quantities to the general public in the commercial marketplace based on established

catalog prices. For these purposes, catalog prices shall be interpreted consistent with the current definition as described in FAR Part 2.101, or if repealed in entirety, the last version of such definition.

4.3.3 Members and/or New Market Entrants applying for membership in FFI will make the following disclosures with respect to any licensed Software Programs:

- (i) Disclose whether another Person owns more than 25 percent of the code of the licensed Software Program. In the event another Person owns more than 25 percent of the code of the proposed Software Program, the Member and/or New Market Entrants applying for membership must additionally disclose the Person from whom the license has been obtained, as well as the business address and contact point to verify the scope of the license and the relationship between the parties.
- (ii) Disclose whether another Person is providing the Member and/or New Market Entrant with servers or other back-end support other than telecommunications, and provide the business address and contact information for such Person.

4.3.4 All Members shall adhere to industry best practices to ensure the taxpayer return information entrusted to them is secure and the privacy of such information is maintained. In any instance where a Member company contracts with a service provider to obtain technology services, the service provider must adhere to the established industry best practices standard. To the extent multiple Members rely on a single service provider for front or back office services (not Internet Service Provider services), such Members must maintain such taxpayer security and privacy from others who share these service providers.

4.4 Functionality of Member's Website and Software Program. Members and/or New Market Entrants will provide the Executive Director and the IRS with a link to the Member's and/or New Market Entrant's proposed Member's Free File Website no less than 15 business days before the Website is expected to go live. Members' Free File Websites will be functionally adequate in permitting a taxpayer to complete taxpayer's return if the return is consistent with the Member's free offer. Prior to launch, the IRS and the Executive Director will review each Member's Free File Website usability. If the IRS and/or the Executive Director determine that a Member's and/or New Entrant's Software Program is difficult to use, and has or will result in a significant and measurable reduction in the ability of taxpayers to complete their return, the Member will not be listed on the IRS Free File Website or may be delisted until both the IRS and the Executive Director are satisfied that the issue(s) which led to the concern regarding Members' and/or New Market Entrants' Free File Website usability have been addressed.

4.5 Disclosure of Forms and Schedules and Limitations.

- 4.5.1 Each Member will offer all of the same federal forms and schedules as offered in their basic commercial online consumer programs if they are outside of the minimum required core forms and schedules.
- 4.5.2 Each Member will offer as a minimum the Core Forms and Schedules as shown in Attachment 1. IRS reserves the right to negotiate with FFI to add new forms before the start of the filing season as necessitated by new legislation.
- 4.5.3 Each Member and/or New Market Entrant will disclose any limitations in the forms and schedules that are likely to be needed to support Members and/or New Market Entrant's free offerings. This disclosure shall take place on Members' and/or New Market Entrants' Free File Landing Pages (or such page must have a clear link to such disclosures directly from this page). Representative examples of limitations required to be disclosed include, but are not limited to, the inability to support more than one W-2 Form, and/or the lack of a form necessary to prepare a return that is likely to be based on the offer. Limitations in forms and schedules do not include any form that is not routinely required, e.g., the separate forms required for taxpayers with foreign income, unless a Member's offering is particularly orientated around such forms.
- 4.5.4 Each Member will clearly disclose the supported schedules and forms in addition to the required core forms supported on the Members' Free File Landing Pages or through links on such page.

4.6 Security.

- 4.6.1 Members will comply with the IRS e-file Security and Privacy Standards, <http://www.irs.gov/uac/IRS-e-file-Security-Privacy-and-Business-Standards-Mandated-as-of-January-1-2010>
- 4.6.2 Members will provide no later than December 15th, each year to the IRS the following information:
 - (i) The identity of the company's Approved Payment Card Industry (PCI) scanning vendor,
https://www.pcisecuritystandards.org/approved_companies_providers/approved_scanning_vendors.php .
 - (ii) An Executive Summary of the Member's PCI Vulnerability Security Scan. The summary shall include the name of the certified PCI scanning vendor, the date the scan conducted, how many live hosts were scanned, and a discussion of the findings. Vulnerability severity levels should be used to categorize the vulnerabilities (i.e., critical problem or high risk, areas of concern, or medium risk or low risk but potential problems).
- 4.6.3 Members will possess and provide appropriate documentation to the IRS and the Executive Director demonstrating they have acquired third party security and privacy certifications.

- 4.6.4 Annually before filing season launch, FFI, or its Members, will conduct penetration and vulnerability assessment of individual Members prior to the start of the filing season. The annual assessments will be conducted prior to, or concurrent with, the annual Acceptance Testing System (ATS) testing. Services relating to this assessment must be obtained from a list of approved vendors jointly created by the IRS and FFI
- 4.6.5 If a Member is not listed, or is delisted by agreement of the IRS and Executive Director due to perceived security or privacy vulnerabilities, the IRS and FFI have the independent authority to require a penetration test be conducted by an approved third party vendor chosen by the Member if the Member is delisted for concerns which include, but are not limited to, such penetration.
- 4.6.6 Only the Executive Director, the IRS, and affected individual company will be apprised of a Member's deficiencies identified as a result of any assessment by the IRS or Free File Inc.
- 4.6.7 Implementation of Completely Automated Turning Test to Tell Computers and Humans Apart (CAPTCHA). Members must implement a CAPTCHA program on the Member's Free File Website as a condition for participation in the program. The CAPTCHA images of text should be distorted randomly and users must then manually enter the text identically as it appears on the screen. The CAPTCHA must be implemented such that a user must successfully complete the CAPTCHA test for proceeding to the next screen. For additional information on the CAPTCHA program, Members may refer to Carnegie Mellon University's CAPTCHA resource page: <http://www.captcha.net>
- 4.6.8 Each Member will ensure that visually impaired taxpayers may access and complete the CAPTCHA program.
- 4.7 Hacker Attacks and Attempts at Intrusion on Member Websites.
- 4.7.1 Any Member that learns of an inappropriate disclosure of a taxpayer's return information to an unauthorized Person, in the course Member's provision of Services, must immediately:
- (i) Report as soon as possible the unauthorized disclosure to the Executive Director and the IRS but not later than the next business day after confirmation of the incident. Members shall follow the Instructions on IRS.gov for submitting incident reports, [http://www.irs.gov/Tax-Professionals/e-File-Providers-&-Partners/Instructions-for--Reporting-Web-site-Security-Incidents-\(updated-10-02-08\)](http://www.irs.gov/Tax-Professionals/e-File-Providers-&-Partners/Instructions-for--Reporting-Web-site-Security-Incidents-(updated-10-02-08)).
 - (ii) Shut down Member's Free File Website at the time of detection.
- 4.7.2 The Executive Director and/or the IRS have complete emergency authority to shut down and/or remove the link to any Member's Free File Website if the Executive Director and/or the IRS believe, based upon objective information, that

unauthorized disclosure of taxpayer information has occurred and/or a threat of disclosure of taxpayer return information exists. Objective information includes, but is not limited to, copies of screens containing unauthorized taxpayer information. Objective information is not merely a complaint or allegation by a taxpayer or third party that an unauthorized disclosure has taken place. However, such a complaint or allegation, when supported by additional facts, can become the necessary objective information. Once a Member's Free File Website has been voluntarily or involuntarily shut down, the Executive Director, the IRS and the Member will conduct a prompt review to ensure that the decision to shut down a Member's Free File Website was well founded. Such a review should be completed by the second business day after a Member is delisted. Inability to substantively complete the review based on a failure by the Member to cooperate shall extend this review. A Member's Free File Website may be relisted once the issues which caused concerns are remedied, but the Executive Director and/or IRS may request or require a broader evaluation of a Member's Free File Website before any relisting is permitted.

- 4.8 One Time No Cost Refiling of Taxpayer Return. When the IRS has rejected a taxpayer's return, Members will permit the IRS rejected return to be refiled at least one time without cost to the taxpayer regardless of whether the IRS rejected the taxpayer's return solely as a result of the taxpayer's mistake, e.g., the taxpayer's entry of an incorrect SSN causes the IRS rejection of the taxpayer's return.
- 4.9 Self-Select Personal Identification Numbers (PINs). Members must permit self-select PINs as an option for taxpayers who qualify for electronic filing of free services.
- 4.10 Time Out Feature. All Members must include a feature in their tax preparation software that will "time out" the session after no changes are made for a period of time consistent with best practices approved by privacy seal certification program.
- 4.11 Guarantee of Calculations.
 - 4.11.1 Each Member shall guarantee the accuracy of calculations performed by its federal free file offering. State returns are not included in this guarantee. For the purposes of this section, the term "Calculations" is defined to mean the numerical addition, subtraction, or multiplication of numbers, and related automatic features that select numbers from tax tables. Calculations do not include any instance where a taxpayer can make a decision to substitute a number for the one automatically computed by the program, and Members are not responsible for changes in tax law made by the Congress during the tax season. All Members will pay any IRS penalties and/or interest resulting from an error in the Member's Software Program's Calculations, notwithstanding the lack of revenue from FFI Filers. The amount of this guarantee shall be limited to the amount accrued when the IRS provides notice to the taxpayer of an improper calculation.

- 4.12 Section 7216 Compliance. Members shall only use or disclose the tax return data Members collect in provision of Services to taxpayers in accordance with the provisions of Section 7216 of the Code.
- 4.12.1 Members will validate that the servers and transmission of tax return data are located in the U.S. If the servers or transmitter are located outside the U.S. or any territory or possession of the U.S., the taxpayer must agree and sign a form consenting to the disclosure. Refer to Revenue Procedure 2008-35, section 4.04(1)(e) and to Treasury Regulation §301.7216-3(a)(3) for complete information and for specific language.
- 4.13 Use of SSN. Whenever taxpayers are requested or required to provide their SSN, it must be part of a secure session.
- 4.14 Returning Free File Tax Filers. If a taxpayer used and completed his/her return with a Member's Free File products or services in the immediately preceding tax year, and in the subsequent tax year visits the Member's commercial website(s) for tax preparation and logs into an account registered with the Member, the taxpayer must be given a first option to return to the Member's Free File offer before receiving any other alternative choices for the Member's publicly available commercial tax preparation products or services. FFI, in consultation with the IRS, shall prescribe the requirements of this uniform communication to the taxpayer, including but not limited to the text, format and prominence of the messaging. Manipulation of the font size and other graphical elements in order to give prominence to the secondary non-Free File option is prohibited.
- 4.15 Disclosure of Taxpayer Service Options.
- 4.15.1 Members must permit a taxpayer who qualifies for a free return to print their return for free on their personal computer system for both e-filed and paper filed returns. This capacity must be provided for the same period of time (e.g., 3 days, 3 weeks, or 3 months) that such services are provided for free to commercial customers.
- 4.15.2 Members must permit a taxpayer who does not qualify for a free return to print their return after paying the applicable fee, if any, charged to Members' commercial customers.
- 4.15.3 Members must permit taxpayers who have begun to complete a tax return to complete the return during the current tax year.
- 4.15.4 Members must clearly list their free customer service options. This disclosure must be available on the Member's Free File Landing Page (or such page must have a clear and prominent link to such disclosures directly from this page). Members must provide taxpayers a free electronic method to obtain a copy and learn the status of their electronically filed tax return.

- 4.16 Availability of Free Services. If a Member's services have not been made available on or before March 15 of any tax season, the Member will not be listed after that

date. If a Member's free services will not be available for the remainder of the tax season based on any unplanned outage, their listing will be removed. Each Member shall promptly notify FFI and the IRS of any planned or unplanned unavailability or scheduled maintenance (i.e., down time) of an offering that is anticipated to exceed 5 hours in duration. Members whose services are delisted will be restored to the IRS Free File Website consistent with IRS service capabilities, but not more than 5 business days after the IRS and the Executive Director agree the services can be relisted. IRS may display members whose Free File program remains active on IRS.gov up to the date that IRS closes processing through the MeF program.

4.17 Blackouts. Maintaining a consistent level of service is important.

4.17.1 No planned blackouts of service are permitted from January 15 through April 15.

4.17.2 Unplanned blackouts or scheduled maintenance in excess of 5 hours requires electronic notice of unavailability to the IRS, FFI, and, whenever possible, via Member's Free File Landing Page. Failure to provide this notice on more than one occasion is grounds for delisting.

4.17.3 During any unplanned blackout or scheduled maintenance, customers seeking to access the Free File option should not be directed to or have access to the fee-based services of the Member.

4.18 Contact Person for Notification. Each Member, in making its offer, shall provide a contact name and number of a person(s) who may be reached 24 hours per day/7 days a week for issues regarding unavailability of the services and security breach of taxpayer data. The IRS (as well as the Executive Director) is entitled to delist any Member if contacts with such person are not successful within a 12 hour period.

4.19 Eligible Taxpayers/No Promotional Codes or Rebates/Links to Paid Sites. In providing free services to qualified taxpayers, Member programs cannot utilize promotional codes or rebates as the methodology of providing free services.

4.19.1 Tagging of Returns. For taxpayers who enter a Member Free File Website from the IRS Free File Website and save any portion of their return, that return should be "tagged" so as to remain eligible for the Member's free offer. This paragraph does not apply to those services offered by Members in permitting extensions (4868) to be filed.

4.19.2 Ineligibility Notification. Free File Member programs must unequivocally inform taxpayers who are ineligible for the free offer at the earliest feasible point:

- (i) That they are ineligible for the Free File offer, and

- (ii) The reason that they are not eligible for the offer, and
- (iii) The taxpayer shall be directed back to the IRS Free File Landing Page as the first and most prominent alternative action so that they may immediately consider other Free File offers available from the Free File Program, and
- (iv) The disqualification practice of each Member must adhere to the standard messaging, language and formatting guidance to be provided by FFI in consultation with the IRS.
- (v) The taxpayer next may be offered a free alternative for completion of their return, provided that the taxpayer is covered by the Program limit of being among the lowest 70 percent of taxpayers.
- (vi) The taxpayer would next be offered the option to continue on the Free File Member's site and pay a fee – which is fully disclosed – to file their federal and/or state return.

4.19.3 Links to Paid Site. Providing an automatic link from the IRS Free File Website to a Member's paid website will result in delisting.

4.19.4 Solicitation for Payment. Members shall not post a billing screen requesting or collecting bank/financial information (e.g., debit/credit card information) from customers who qualify for a free return where no state tax return products have been purchased.

4.20 Date Changes. The IRS has the authority to change any date utilized in this MOU to conform to changes made in regulatory or statutory requirements, or to update the MOU each calendar year. Notice of such change will be tied to such specific regulatory or statutory requirements.

4.21 Disclosure of State Preparation and Filing Options. FFI shall offer free state tax preparation and e-filing in all states that participate in a State Free File Program. FFI is not required to provide free services for state returns in Non-Free File States. The IRS will not provide links to any Non-Free File State Department of Revenue websites from the IRS.gov Free File Website.

4.21.1 FFI members must disclose their state service offerings on each individual Member's Free File Landing Page and make clear whether such returns are free or paid. Any offer for paid state return preparation and e-filing services shall state clearly all the details of the offer, including a single, consolidated fee for such service. Free or paid state offers shall be displayed on the Free File Landing Page prominently. Members must provide the list of states that they currently support. This list shall only include states that have completed state testing and whose software programs have been approved by the state and are ready for use. Members shall include a listing of each State Free File Program that the Member participates in and a hyperlink that will allow taxpayers to access the Members' Department of Revenue State Free File offering.

4.21.2 The IRS may provide information for taxpayers on the IRS Free File Website.

Such information may include, but is not limited to, the following:

- (i) Federal Free File supports preparation of Federal tax returns. Many member companies also offer free or paid state tax preparation and e-filing services.

- (ii) Some companies may not offer state tax preparation and e-file services for all states.

The IRS further agrees it will not provide links to the Websites of any Non-Free File States Department of Revenue Websites from the IRS.gov Free File website

- 4.22 Unilateral Changes by U.S. Government. Any unilateral changes imposed by the U.S. government on FFI whether by statute, regulation, or administrative action will result in an immediate re-evaluation of the decision to continue FFI, and could result in an immediate suspension of free services upon the decision of each Member. Any inclusion of links from the IRS Free File Website to Non-Free File State Department of Revenue websites is grounds for FFI to immediately dissolve its obligations in this MOU.
- 4.23 Compliance with Federal, State, and Local Laws. Each Member shall provide all Services in accordance with all applicable federal, state, and local laws, rules, and regulations. Each Member shall immediately notify the Executive Director upon its receipt of any notification, oral or written, alleging that such Member is not providing the Services as set forth herein.
- 4.24 No Transfer or Assignment of Membership Permitted. No Member may transfer its membership interest in FFI to any Person, unless as a result of a merger or acquisition to a successor corporation to the Member reported in a timely fashion to FFI
- 4.25 Free File Indicator. Members will provide an electronic Free File indicator. If the Member is providing a Spanish version of their Free File product they will provide a Spanish Free File indicator.
 - 4.25.1 The IRS agrees it will not use the indicator to build a marketing database;
 - 4.25.2 The IRS agrees it will not use the indicator to compile company specific data or proprietary data; and
 - 4.25.3 The IRS agrees it will only use the database to create aggregate data profiles of all users.
- 4.26 Disclosure. The IRS will ensure its Freedom of Information Act office is aware of FFI concerns about disclosure of company specific data, and actively afford notice and opportunity to intervene by FFI and impacted company as is required by statute and regulation.
 - 4.26.1 The IRS will promptly notify the Executive Director in writing if a governmental agency or entity, including, but not limited to the Congress, any Inspector General, or Taxpayer Advocate, or a private party is requesting aggregate data concerning individual Members; and the IRS has concluded it cannot refuse to provide such data:

- (i) The Executive Director upon receipt of the IRS's written notification may immediately advise Members that they can cease providing the indicator;
 - (ii) FFI cannot unilaterally suspend the indicator absent proof which it supplies the IRS that the aggregate data concerning an individual Member described above has been compiled or released;
 - (iii) In the event any domestic law enforcement agency formally subpoenas or provides the IRS with appropriate process for data resulting from the indicator that is not aggregated, notification to the Executive Director can be delayed for a period not to exceed 90 days; and
 - (iv) Any Member(s) which suspends the indicator in accordance with the terms described above shall be expected to provide the total number of accepted e-filed tax returns originating from their Free File service under procedures mutually agreed to by the IRS and the Executive Director.
- 4.27 Pop-ups, Spyware and other Marketing Tools. The IRS will work with FFI to develop further agreed upon guidance for Members to ensure that their web sites/Free File pages are in compliance with IRC §7216 with respect to pop-ups, pop-unders, adware, spyware, etc.
- 4.28 Customer Satisfaction Survey. The Members will provide the necessary support to accomplish a customer satisfaction survey.
- 4.29 Annual Review. For any multi-year agreement between the IRS and the FFI on an annual basis, the parties will review the Free File Program and decide what, if any, improvements need to be made for the next filing season. Any improvements agreed to by the parties shall be reflected in an MOU executed by the parties.
- 4.29.1 Review for Compliance. FFI and IRS conduct reviews of Members' Free File Landing Pages for compliance with the requirements and obligations contained in this MOU. The review process is under the control of the Executive Director and IRS leadership but will consist of a pre-filing season review for compliance that allows a Member to remediate any identified deficiencies, and a review to ensure that remediation has occurred. The IRS also conducts a random, unannounced review during the filing season to ensure continued compliance.
- 4.30 Annual Revision. The IRS and the Executive Director may annually revise the MOU between the parties that provides structure for the roles.
- 4.31 Modifications to Standards of Practice. The Executive Director and the IRS may unilaterally propose additional standards necessary for the Standards of Practice during the tax season. Any additional standards shall be provided to the Members by email. The Executive Director and/or the IRS shall determine whether the standards need to become effective immediately or can await a Member meeting. In any instance where the Executive Director and/or the IRS believe the standards need to be immediately effective, the immediacy of the effect of the new standard shall be noted in the email transmittal, and the additional standards will become effective 5

days later, or the first business day if the fifth day falls on a weekend or holiday.

4.32 Permitted Sales, Limits on Ancillary Sales, and Selling Activity

- 4.32.1 Sale of State Tax Returns Permitted But Not Required. Taxpayers who enter a Member's Free File Landing Page must be able to see a clearly-stated offer for state tax return preparation and e-filing. The free or paid state return offer must be

clear and located on the top half of the landing page, and if different fonts are used, the fees and description of the state tax preparation and e-filing must be presented with a typeface and prominence no less than the majority of text on the page, and must include a single, consolidated fee charged for state return preparation and e-filing, as well as a link to a list of state forms offered and federal forms and schedules offered. This offer to provide a free or paid state return may be repeated one additional time in the Member's site. Member providers of unbranded fillable form utilities may not offer a state return.

- 4.32.2 Provision of Federal Return When Taxpayer Does Not Qualify for a Member Free File Offer Is Permitted. When a taxpayer enters a Member's Free File Landing Page and begins to complete a return but ultimately cannot qualify for the Member's free offer, the Member must provide, as a first option, a prominent hyperlink for the taxpayer to return to the IRS Free File Landing Page (consistent with Paragraph 4.19.2). A Member also may provide free returns to those who do not qualify for the Free File offer, provided they are covered within the terms of the Program. Finally, a Member may inform the taxpayer that he or she has the choice of preparing and filing a federal return using the Member's commercial product. The charge for such commercial product or service shall not exceed the usual commercial price for such products or services.
- 4.32.3 Reasonable and Customary Charges for Taxpayer Use of Credit Card or its Equivalent Are Permitted. A Member company may charge taxpayers who have a balance due reasonable and customary charges from credit card service providers or their equivalent related to payment services they provide. Refund Anticipation Loans, Refund Anticipation Checks, and other forms of payment are not permitted by this section.
- 4.32.4 Email Communication with Free File Taxpayers. Free File Members shall communicate not less than once annually via email with their taxpayer customers who used Free File services and completed their returns through Free File in the immediately preceding tax year prior to the opening of the following tax season. The content of this email(s) shall only remind the taxpayer about the availability of the Member's Free File offer and invite them to return to the Member's Free File Landing Page. Free File Members shall not use these communications to communicate with the taxpayer about any non-Free File commercial products or services. No marketing, soliciting, sale or selling activity, or electronic links to such activity, will be permitted in these email(s).
- 4.32.5 No Other Sales and Selling Activity. No marketing, soliciting, sales or selling activity, or electronic links to such activity, are permitted in the Free File Program, with the exception of the following: (i) the sale of a federal return where, as noted herein, the taxpayer is determined ineligible for the Member's Free File offer and chooses to complete and file his or her return using the Member's commercial offer, or (ii) disclosures or sales (as applicable) related to free or paid state tax preparation offers as specifically provided for in this MOU.

4.32.6 Prohibition on “Value-Added” Button. Members shall not include a “value-added” button (i.e., an icon, link or any functionality that provides a taxpayer with access to a Member’s commercial products or services) on the Member’s Free File Landing Page.

- 4.32.7 The Member shall have a prominent link permitting taxpayers on a Member's Free File Landing Page to easily and clearly return to the IRS.gov Free File Landing Page.
- 4.33 Names Utilized by Member Companies. Members shall possess a clear association between the company or product name posted on IRS.gov and the Member's company or product name. Where a company or product name has been used prior to 2007 by a Member company, the Executive Director and the IRS has the authority to accept or reject a proposed name change to company or product name, and if the Executive Director refuses to permit such change, it is subject to the Dispute Resolution Mechanism at Article 7. No change in name of company or product will be permitted once the Member submits its name to FFI and the IRS for the tax season, unless such a change is required by an adjudication regarding such name.
- 4.34 Use of the Free File Logo. The IRS and the Members agree to use the logo consistent with the terms specified in Version 1 of the Trademark and Copyright Assignment and License Agreement, December 31, 2007.
- 4.35 Promotion of the Free File Program. The IRS will make consistent, good-faith efforts to promote the Free File Program in appropriate media activities, interactions with other federal agencies, social media and social networking activities, and in its appropriate technology applications.
- 4.36 Innovations. FFI and IRS agree that specific, continuous, and ongoing efforts should be made to provide further innovations for the benefit of Free File taxpayers.
- 4.36.1 Pre-Population of Returning Taxpayer's Prior Year Tax Information. IRS and FFI share the goal that Members should be encouraged to incorporate technology that pre-populates a taxpayer's prior year return data into the current year return

whenever a Free File taxpayer uses a Member's Free File Website for any consecutive year(s).

- 4.36.2 Pre-Population of Taxpayer Data from W-2 and 1099 to Current Year Returns. IRS and FFI agree that Members should incorporate technology that permits taxpayers to upload forms, such as W-2 and 1099, in order to pre-populate individual, current-year tax returns with the data from these forms. FFI will make a good faith effort to offer Members the use of such technology for use in the Free File program, which may be patented, copyrighted, or trade secret protected. If successful in procuring such technology at no cost, FFI will offer the use of such technology for free to Members who choose to provide this service to taxpayers within the Free File program. Notwithstanding the foregoing, any member may use its own technology to provide the services described in this paragraph. IRS will investigate requirements or voluntary agreements it may reach with payroll companies to encourage them to cooperate with this pre-population.
- 4.36.3 IRS and FFI mutually agree to support and promote Free File as an "Innovation Lab" to test, pilot, and offer capabilities to simplify taxpayer compliance, such as data importation offered by industry as described herein, and such as IRS's Application Programming Interface (API) projects, consistent with all other terms and conditions in this MOU.
- 4.36.4 This agreement does not limit IRS from providing phone-based, web-based or electronic interaction between the IRS and a taxpayer (or taxpayer's representative) regarding issues in a previously filed return after such a return has been accepted by IRS. IRS will make an effort to communicate its activities in this respect to FFI and seek opportunities to work with FFI Members.

ARTICLE 5

TERM

This agreement [the 8th MOU] shall be complete and binding as of the date of the last signature on this document. Notwithstanding this, the 7th MOU continues in force and effect until its termination on October 30, 2018. The term of this 8th MOU is 3 years, from its effective date on October 31, 2018 to its termination date, which shall be October 31, 2021, and may only be terminated or amended according to the terms of this agreement.

The early completion of the 7th MOU is intended to enhance the Free File Program by providing additional taxpayer protections and choice.

ARTICLE 6
BREACH AND REMOVAL FROM THE IRS FREE FILE WEBSITE

- 6.1 Removal from the IRS Free File Website. A Member's listing may be removed from the IRS Free File Website, or a New Market Entrant may be refused permission to list its offering upon the IRS Free File Website, based upon the occurrence of any of the following:
- 6.1.1 The IRS and/or the Executive Director's determination that a New Market Entrant does not meet the Level of Service and/or Standards of Practice of this MOU;
 - 6.1.2 The IRS and/or the Executive Director's determination that a Member has failed to provide Services in accordance with the Standards of Practice set forth in this MOU, and the Member has not taken necessary corrective actions, if any may be taken, in the timeframe allotted by the IRS's and/or Executive Director's written notice to the Member;
 - 6.1.3 The IRS and/or the Executive Director's determination that a Member has failed to comply with its obligations under this MOU per Section 4.29.1, and that the Member has failed to timely remediate identified deficiencies.
 - 6.1.4 The IRS and/or the Executive Director's receipt of notice that a Member has undergone an event of Bankruptcy; or
 - 6.1.5 The IRS and/or the Executive Director's receipt of written notice from a Member that the Member does not wish to be listed on the IRS Free File Website and/or continue in FFI
- 6.2 Determination Process. The Executive Director and/or the IRS may make the determinations described in 6.1.1 through 6.1.4 above (i) in coordination with each other; (ii) upon each party's own volition with written notice to the other party; or (iii) upon the reasonable request of a Member and/or third party as determined by the IRS in coordination with the Executive Director.

ARTICLE 7
DISPUTES

- 7.1 Administrative Review. After a determination process pursuant to Article 6 of this MOU, a Member advised by the IRS of the denial or removal of its free offer from posting on the IRS Free File Website has the right to an administrative review. The Member may submit a detailed written explanation with supporting documentation requesting a final determination that the decision to deny or remove their offer from the IRS Free File Website should be withdrawn. Within 3 business days of receipt of the Member's written response, the IRS will reconsider and may either withdraw or affirm its action. During this administrative review process, the decision remains in effect.
- 7.2 Administrative Remedy. After a determination process pursuant to Article 6 of this MOU, any Member who has been refused the ability to list on the IRS Free File Website and/or has been removed from the IRS Free File Website by the IRS, or

mutually by the IRS and FFI, may challenge the determination to the Civilian Board of Contract Appeals (CBCA) in accordance with the CBCA's Rule of Procedure.

The CBCA's review is authorized by the Alternative Dispute Resolution laws and regulations issued by the U.S. Government and are in lieu of any litigation in any court.

- 7.2.1 The CBCA will be the exclusive venue for resolving disputes concerning any action taken by the IRS or the IRS and FFI under the terms of this MOU as described in 7.2.
- 7.2.2 FFI shall be responsible for paying the CBCA for all costs incurred by the CBCA in any proceeding related to this provision. Each party to the adjudication shall initially pay its own costs and fees. For the purposes of this section, a party to adjudication may include any Member, FFI, and/or the IRS.
- 7.2.3 If the IRS, or mutually by the IRS and FFI, determines not to permit a New Market Entrant to list its offering on the IRS Free File Website, the IRS and FFI, by mutual agreement, may permit or refuse the New Market Entrant the right to use this provision to review the decision not to permit the New Market Entrant's listing on the IRS Free File Website. For the purposes of this Section, the payment provisions of Section 7.2.2 apply to any adjudication brought by a New Market Entrant.
- 7.2.4 A Member or New Market Entrant who does not prevail in its appeal before the CBCA is required to pay 100 percent of the costs, fees, and expenses incurred by the CBCA and FFI. FFI will invoice the Member and/or New Market Entrant for such costs, fees and expenses, and the Member and/or New Market Entrant shall pay FFI within 10 days of presentation of an invoice for such amount. If the Member or New Market Entrant does not pay these costs, they are no longer in good standing and cannot participate in FFI meetings or be posted on the IRS website.
- 7.3 The following rules apply to all CBCA proceedings: the Member and/or New Market Entrant who challenges an IRS determination or a joint determination of the IRS and FFI under Section 6 or 7 of this MOU shall not be entitled to any monetary remedies, and the Member's and/or New Market Entrant's sole and only remedy shall be an order directing the IRS to act in accordance with the CBCA's decision. The CBCA's decision with respect to the termination or reinstatement of the Member on the IRS Free File Website or any other order shall be final and binding and shall not be subject to review. The CBCA shall have the authority to grant motions, including motions to dismiss and motions for summary judgment, in appropriate circumstances. The CBCA shall have no authority to add to or to modify this MOU, except as permitted by joint agreement of the CBCA, IRS and FFI.

ARTICLE 8

NO RELATIONSHIP TO FFI OPERATING AGREEMENT

FFI can continue to change and amend the FFI Operating Agreement without regard to this MOU. Notwithstanding the prior sentence, the terms of the FFI Operating Agreement and/or any change in the FFI Operating Agreement have no impact on this MOU unless and until the

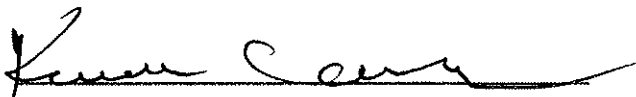
MOU is amended in writing by agreement between the IRS and FFI, which agreement can be withheld by the IRS.

ARTICLE 9 INTEGRATED AGREEMENTS

The terms of this MOU are final and binding unless and until it is superseded by a signed agreement between the parties. The IRS and FFI agree that this document and all prior original and supplemental signed agreements other than only the current and latest MOU between the IRS and FFI remain in full force and effect unless the language of this MOU is inconsistent with such prior written terms, in which case the terms and language of this MOU shall control.

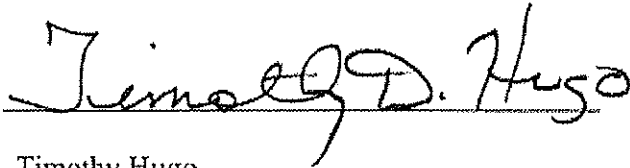
ARTICLE 10 TERMINATION

- 10.1 Either party may terminate this MOU for cause if the other Party fails to comply with this MOU, and such failure is not cured within thirty days of written notice of such failure from the other party.
- 10.2 The IRS may terminate this MOU without cause, such termination to be effective 12 months after the date of notice of such termination.
- 10.3 Should the IRS commit funding to offer Services for free to taxpayers the IRS shall notify FFI immediately. If the IRS gives such notice during the tax season (between January 1 and April 15, or the last day of the filing deadline if that date is changed from April 15) of any year, FFI may, by written notice to IRS, terminate this MOU, effective on April 16 (or, if the filing deadline is changed from April 15, on the day following such new deadline) of that year. If the IRS gives such notice between April 16 (or, if the filing deadline is changed from April 15, on the day following such new deadline) and October 15 of any year, then FFI may, by written notice to IRS other than during a tax season, terminate this Agreement, such termination to be effective no fewer than 30 days after the date of FFI's notice of such termination. If IRS gives such notice between October 15 and December 31, FFI may by written notice immediately terminate this Agreement at any time on or before December 31.



Kenneth Corbin
Commissioner, Wage and Investment Division
Internal Revenue Service

Date: 10-31-18



Timothy Hugo
Executive Director,
Free File, Inc.

Date: 10-25-18